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American Interests First. President Wilson's address at the silver jubilee celebration of the Daughters of the American Revolution in Washington, October 11, contained a warning to men in politics that they must declare themselves whether they are or are not for America first. Making no reference to the activities in this country of foreign partisans, the president in effect warned American politicians that they must not seek to make capital by trying to "use the might of America in some matter not of American originative." He pointedly added: "I look forward to the necessity in every political agitation in the years which are immediately at hand of calling upon every man to declare himself where he stands. Is it America first, or is it not?"

This question applies as well to the support of American business interests against dictation in affairs of finance, commerce and trade in products, commodities and merchandise, originating within our jurisdiction or sold in our markets and through our banks. We have goods to sell to any who buy at our prices or upon our terms of credit. We have capital for investment upon fair terms. Political agitation to restrain or prohibit any of such commerce, credits or investments for the purpose of building up American trade interests, requires a fixed limit of tolerance, to pass which shall constitute invasion of the private rights of Americans to do business and invest their funds where they please.

Cosmopolitan Markets. American markets are open to any who buy and take away their goods. It is no fault of America that Germany is not able to come and buy on credit or for cash. Her inability to buy is as much our loss as her misfortune. She is isolated by war conditions in Europe. But if she could buy here, it would be preposterous to refuse to sell to others for money, on credit, or in exchange for other merchandise, any of those staple commodities we have a surplus of. And there is no reason why we should not go on trading with other countries, nor why in the conduct of that trade we should not lend them credit, as we should lend it to Germany if the conditions were reversed, and as we should be willing to do with conditions as they are, provided Germany could come and get the

goods. Because we are neutral purveyors and our markets are open to all, we must consider only American interests in sales and credits to those who buy here, have the necessary credit or money, and the means of transportation for consumption abroad. It is not to American interests to refuse credit to good customers.

The Anglo-French Loan. The negotiations of the Anglo-French Commission with a syndicate of American financiers for a large credit to restore the stability of sterling exchange resulted in an agreement for the issue in this country of a joint obligation of the two governments, the proceeds of which will be utilized for the payment of exports of merchandise and not for purchases of war munitions. The terms of the loan, printed on succeeding pages, show the conditions of issue and interest which have been approved by the British and French parliaments. The members of the Commission signed the agreements and sailed for England on October 16. Technically the loan is a remedy for the depressed conditions of exchanges between the three countries. Practically it is a measure to finance the costs of exports of American products, food supplies and commodities common to commerce by an issue of bonds, guaranteed jointly and severally by the two governments, for a term of five years, bearing 5 per cent interest, all of which was underwritten by the syndicate at 96. No one banking concern controls the syndicate; the members share proportionately to their commitments and costs of placing the bonds with investors. The first public offering at 98 and interest is subject to prior sale and advancement in price.

Bonds Over-subscribed. It was currently reported that the underwriting of the great loan was oversubscribed by more than $100,000,000, but there was no desire to show a big over-subscription, and no statement of the excess applications was forthcoming. Mr. J. P. Morgan told questioners that the books were closed when the full amount had been underwritten and that no attention was paid to applications subsequently received. Foreign applications for participation were refused, except from those with funds on deposit in this country; the latter reached a respectable total and included the subscription of Sir Ernest Cassel of $5,000,000. The American subscriptions came from 68 manufacturing centers of population in different parts of the country. It was stated that six of the subscriptions aggregated $100,000,000; one was $35,000,000 and another $20,000,000, with lesser sums.

Loan Privileges. The ultimate security behind any national loan lies in the taxing power of the government, which sufficed in our own case, and a record of fidelity to financial obligations which elevated the credit of the two contracting governments among

the first of nations. The new bond is the only external loan of the issuing governments except some French short-term notes. It is an issue of bonds of $100 to $1,000 for coupon bonds, and registered bonds of $1,000 or multiples thereof, which are interchangeable, for five years, bearing 5 per cent interest, payable semi-annually, offered for sale at 98 and interest. Principal and interest are payable in the City of New York in United States gold coin, free from deduction for any present or future British or French taxes. The feature most interesting to investors is the privilege of conversion at the option of the holder upon notice prior to April 15, 1920, into a 4½ per cent gold bond maturing in 1940 but redeemable at the option of the governments at par at any interest date after 1930. Upon the precedents of the century, sales of such bonds with a 15 year period varied from par to over 127 according to conditions of national emergency.

Deductions from the course of returns upon holdings of government bonds indicate a valuable privilege in the conversion feature for bonds purchased at 98 and interest, netting close to 5½ per cent. Reduced to simple terms, an investment of $980 and interest to date of purchase buys a $1,000 bond for five years, carrying a total interest payment at 5 per cent. of $250, and upon conversion in 1920 to a 4½ per cent bond, interest, amounting by 1930 to an additional $450; an interest return of $700, and in principal and interest of $1,700, or nearly 174 per cent. on the investment of $980; if not called for redemption until maturity in 1940 the principal and interest return would amount to $2,150. It was this feature which attracted the English applications, in addition to the freedom from the British income tax.

Supplementary Credit Required.

The proceeds of the underwritten bond issue will furnish a credit in New York of about $480,000 000 to cover interest charges and finance American export bills coming due. But it does not provide for the heavy Fall movement of food and grain stocks to Europe which this year promise to be large, both in quantity and price, now that the Dardanelles campaign has failed to unlock Russian harvests. The necessity of a supplementary credit is obvious.

Sir Edward H. Holden, chairman of the London & Midland Bank and senior member of the Anglo-French Commission, attended a conference of New York bankers on October 11 to discuss the foreign exchange situation, Those present included such leaders in banking as President J. S. Alexander of the National Bank of Commerce; W. H. Porter of J. P. Morgan & Co.; President C. H. Sabin and Vice-President Max May of the Guaranty Trust Co.; James Brown of Brown Bros. & Co , and Benj. Strong Jr., Governer of the N. Y. Federal Reserve Bank. It was pointed out that the great loan credit would not suffice to hold up exchange rates and that the mounting balance of trade required extraordinary measures because the risks of settle-

ment in sterling exchange are all taken by the American exporters and banks. Proposals were made that London and New York banks cooperate for the substitution of dollar exchange for sterling wherever possible; that London banks guarantee their customers for definite amounts with American banks, upon which our exporters could draw their bills in dollars. The plan would give the London banks three months time to settle their obligations, or if necessary to purchase gold for shipment here, and would materially relieve the exchange market.

The New York Times reported that Sir Edward objected on the ground that it meant a transfer of the risks of exchange from American exporters to British importers. This was admitted by the New York men, but the latter suggested that in making contracts the British importers could figure on a basis that would allow them time to purchase gold before maturity of a 90 days bill. This suggestion was met by the objection of Sir Edward that such a plan might drain England of too much gold. The suggestions will be referred to the London stock banks upon the arrival of the commission in England. It is obvious that the matter cannot be long delayed.

Financial Safety First. The Federal Reserve Board very properly rejected the Treasury proposal to establish branches of Reserve banks in South America and other countries. The system is not equipped for such a venture upon its own account. Establishment of such branches in South America would involve grave risk of capital that should not precede the growth of business offering essentially liquid investments. Latin-American credits, however safe or profitable, are notoriously long term in duration and the security is largely agricultural in character, not easily convertible, as required by the spirit of the Reserve Act. Moreover, the Reserve funds form the ultimate reserves of the member banks, held for their emergency demands for credit. To venture such funds abroad in almost unknown financial conditions without the guarantee of a bank within the system would incur the risks of direct investment under different conditions from those at home, complicated by reactive war influences. When London bankers will accept no risk of capital abroad except upon full security and upon necessary commitments for home interests, it is prudent to concur in the example. Our bank reserves cannot be safely tied up in unliquid obligations, and our surplus is needed to finance our own interests.

Hysterical Defense Proposals. While there appears no cause for war between the United States and any other nation, the first session of the Sixty-Fourth Congress faces an avalanche of proposals for mammoth appropriations and immediate reorganization of the military and naval forces of the Republic to resist invasion from unknown countries, the nearest at least 3,000 miles

distant, and most of them too busy to give us even attention. The estimates of expenditures for defensive preparations called for far exceed those made by any other country in peace times; exceed those of last year by several hundred millions of dollars. Proposals for doubling the navy, for utilizing the latest inventions of science, for organization of a great standing army and plans for compulsory service of males of fighting age are daily increasing in number and cost requirements. Upon the scale urged would be involved annual costs of a billion dollars more than that of the present establishment for all purposes, which faces a deficit in revenues. Most of the proposed increases would be imposed in taxes upon the incomes and business enterprises of the people

If a moderate increase of the army and navy were called for in administration plans of a better equipment of munitions per man and fort or ship of war, there is no doubt that Congress would be ready to grant the necessary authority. But to organize a great standing army or to require in peace compulsory service of males of fighting age is impractical except to overawe American citizens. It will be necessary for Congress to exercise more common sense than was displayed in its submission in the case of the Panama Canal, now indefinitely closed by slides. We might better keep our capital for real emergencies.

BANKING LAW.

Note Sent for Collection Without Specific Instructions—Duty to Protest and Give Notice.

The mere fact that a note, sent to a bank for collection, is not accompanied by specific instructions as to protest in case of dishonor, does not excuse the collecting bank from the duty of taking the necessary steps to charge the parties to the note, in case it is not paid upon presentment. The rule is the other way round. In the absence of specific instruction, dispensing with protest, the collecting bank is under an obligation to present the instrument for payment at the proper place and time and, in case of dishonor, it must send out proper notices of dishonor. And, in a case, where formal protest is essential to charge the parties to the instrument, it must be turned over to a notary for protest.

This was brought out in the case of Citizens' Savings Bank & Trus Co. v. Northfield Trust Co., recently decided by the Supreme Court of Vermont and published herein on page 684. In this case the only instructions, given to the defendant bank, were to "collect and remit." It was held that the defendant bank was in duty bound ts make presentment for payment and to take the steps necessary to charge the parties and that its default in this regard rendered it liable. It was also held that the fact that the defendant made no charge for handling the collection had no effect on its liability. The general benefit, which

a bank derives from the making of such collections, is regarded as a consideration for the undertaking, sufficient to uphold the liability.

Implied Waiver of Notice of Dishonor.

There are many ways in which the right to notice of dishonor may be waived, other than by writing a specific waiver on the face of the instrument, to which the waiver is intended to apply. A waiver of notice is often implied from the actions of the party to be charged, or from words used by him. The case of Dillon v. Bron, recently handed down by the Supreme Court of Kansas, and published in this number, on page 694, was an action against the indorser of a note, in which it appeared that no notice had been given.

It appeared that, at the time the note was sold to the plaintiff, the indorser promised that he would look after it and stated that the money would be in his hands. On the day on which the note matured the plaintiff called the indorser on the telephone, reminded him of the note and asked him if he would take care of it. The indorser answered that he would look after it. Afterwards the plaintiff called the indorser on the phone several times and inquired if the note had been taken care of, to which inquiries the indorser replied that it had not. Apart from these conversations no notice of dishonor was given to the indorser.

It was held that there had been, in effect, a waiver of notice of dishonor and a judgment in favor of the defendant was reversed.

Financing a Lumber Shipment.

A recital of the facts, which led up to the bit of litigation, known as People's State Band v. Davis, recently before the Court of Civil Appeals of Texas, and published on page 677 herein, is necessary to a clear understanding of the rules of law involved and how the application of these rules resulted in a financial loss to a bank which undertook to finance a shipment of lumber.

The plaintiffs were in business under the name of Cow Creek Lumber Company and were the owners of a saw mill and of certain pine timber upon land around the mill. They leased the mill to one Rigney and agreed to sell him lumber at the rate of $7.25 per thousand feet. Rigney, not having the capital necessary to carry out his lumber transactions, entered into an arrangement with the defendant bank, under which the bank undertook to finance him to the extent of 80% of each carload of lumber, shipped in accordance with the terms of the agreement. As each carload of lumber was shipped, Rigney would indorse the invoice and bill of lading and deliver them to the bank and, at the same time, he would deliver to the plaintiffs an order on the bank, directing it to credit to the account of the plaintiffs the amount of money due them. Each order referred to the number of

the car in which the lumber was shipped and the price per thousand feet of the shipment. After the bank received these invoices and bills of lading it would collect from the consignees and would then credit the same to Rigney's account, after deducting the amount already credited to the plaintiffs on account of the shipment. The plaintiffs were allowed to draw against the credits given to them under this arrangement without question.

On one occasion a shipment of 19 cars of lumber was sent out by Rigney and the defendant credited to the plaintiffs' account $1,295.09, under the agreement between itself and Rigney. For some reason, which does not appear in the opinion written by the court, the bank was unable to collect from the consignees and it thereupon charged back to the plaintiffs the amount which it had previously credited to their account. Later the bank managed to collect a part of the sum due on the lumber and it gave the plaintiffs credit for the amount collected. The bank, however, was still out the sum of $543.81 and this amount was still charged against the plaintiffs' account.

Upon the bank's refusal to pay this money to the plaintiffs, or to credit it to their account, this action was brought. It was held that the bank was liable. On behalf of the bank it was contended that the bank was acting within its rights in charging back to the plaintiffs the amount uncollected on the shipment, the contention being based upon the following rule of law: "Where a bank receives paper for collection, which is credited to the depositor as cash, the bank is not liable to the the depositor for the amount thereof, if the paper is worthless or is subsequently dishonored,"

It was held that this proposition, so far as it went, correctly stated the law. The trouble was that it had no application in the present case. As between the bank and Rigney there was no doubt that the bank handled the invoices and bills of lading as collections merely. But, as between the bank and the plaintiffs, the case was different. When the bank credited the plaintiffs' account, by reason of a shipment of lumber, there was a payment to the plaintiffs and, as between these parties, the transaction was closed. The bank had a lien on the lumber shipped and it had a claim against Rigney, but it had no enforceable rights against the plaintiffs. The situation was the same as though the bank had credited the amount to Rigney's account and he had drawn it out by check and paid the plaintiffs for their lumber.

The case points out one method of financing shipments of goods, which should be avoided by banks. In cases of this kind, if the bank wishes to have a valid claim against the responsible party to the transaction, in the event that the shipment is not paid for by the consignees, it should have an express understanding to that effect. The mere fact that the responsible party is a depositor in the bank does not give the bank the right to recoup its loss out of such party's deposit.

Proving Notice of Dishonor. Before the holder of a negotiable instrument can recover in an action brought on the instrument against an indorser, he must allege and prove presentment for payment and the giving of notice of dishonor to the indorser. He does not have to show that the notice, in case it was sent by mail, was actually received by the indorser. It is enough if he establishes that it was properly mailed. The Negotiable Instruments Law provides: "Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails."

While it will not help the indorser any to show that he never received a notice, if the holder has produced testimony to the effect that it was mailed, the indorser may with good effect introduce evidence to show that the holder is mistaken in his claim that a notice was mailed. This is what happened in the case of First National Bank of Manistee v. Star Watch Case Company, a Michigan decision on page 691 of this issue. The notary, who protested the note, on which the defendant was sued as indorser, testified that he protested it on March 24, 1911, and that on the same day he sent a notice of dishonor to the defendant by mail and wrote across the face of the note these words:

"Protested for nonpayment March 24, 1911.

"G. A. Dunham, Notary Public."

A witness, called on behalf of the defendant, who happened to be the president of the corporation which made the note, testified that he saw the note three days later and that the words quoted above were not written thereon at that time. It was held that this was sufficient to justify submitting to the jury the question of fact as to whether or not the notice was actually mailed, and a judgment in favor of the defendant was affirmed.

Pooling the Bank Examiner. In making reference to the recent decision of the Supreme Court of Washington, in the case of Skagit State Bank v. Moody, published herein on page 635, we feel impelled to repeat the frequently quoted lines of Scott:

"Oh what a tangled web we weave
When first we practice to deceive."

How often it happens that the weaver becomes enmeshed in the strands of his own carefully spun web. In the case we speak of the defendant had been one of the directors of the plaintiff bank. The bank owned a note, which called for the payment of $8,000 and which was known as the Cain Brothers note. The interest on the note had been defaulted for so long a time that the bank examiner had directed that the interest be collected or that the note be charged off. In anticipation of a visit from the bank examiner an informal meeting of some of the officials was held and it was decided that two of their number should

each give a note for $500, payable to the bank, to take up the overdue interest on the Cain Crothers note. The two $500 notes were accordingly given, one of them being given by the defendant. The notes were carried into the bank's bills receivable and the amounts credited on the overdue interest.

When the defendant was subsequently sued on his note he set up various defenses. He alleged that there was no consideration for the note; that it was given for the accommodation of the bank for the purpose of deceiving the bank examiner and was therefore void; that there was an express understanding that the note should be afterwards returned to him; and that, after the execution of the note, the control of the bank was purchased by others, who agreed and promised to return the note to the defendant.

It was held that these defenses would not do. The defendant was held to be liable on his note. The note was given for the accommodation of the corporation, by which the original note was made, rather than for the accommodation of the bank. And, so far as consideration was concerned, there was a valid and sufficient consideration moving from the bank to Cain Brothers, in that the bank surrendered its right to proceed against the Cain Brothers for the interest, which the defendant's note was given to cover.

On the contention that the note was void, because given for the purpose of deceiving the bank examiner, the court said: "It will not be out of place to say that the insistence of counsel for respondent (defendant) at the trial that the transaction, being conceived and carried out by the parties in fraud of the law, makes the note void as between the parties is without merit. It is only where a note is given in consideration of an illegal transaction that it is void. The transaction between respondent and the bank was a lawful thing. Respondent willingly loaned his credit to the Cain Bros. note. He intended it as a payment of their overdue interest. There is no suggestion of fraud or deception or that he misunderstood the purpose of it. It is the relation of debtor and creditor existing between the bank and Cain Bros., and not the illegal purpose mentally reserved by the parties, that sustains the transaction."

This is a decision worth remembering. Many a man has signed a promissory note upon being convinced that he will never be called upon to pay it. If he is never going to be asked to pay the note, if in signing he assumes no liability whatever, there is no reason on earth why he should not oblige a friend by merely placing his signature thereon. But somehow, just in the case we have been discussing, it often happens that he is not only called upon to pay the note, but is compelled to pay it by the courts. If he can convince the person, who asks his signature as a favor, by reference to legal authority, that, in spite of an understanding that no liability attaches, he may nevertheless be held liable on the instrument, he has a perfectly good reason for declining to sign.

Sale of Collateral Without Notice at Inadequate Price.

When a borrower puts up collateral to secure his note he must expect his collateral be sold if his note is not paid at maturity. But, even if the note is not paid, the borrower has certain rights, which the lender must respect in selling the securities and applying the proceeds to the payment of the note. Frequently the parties enter into a written agreement, setting forth the terms and conditions upon which the collateral may be sold. The fact, however that there is no such contract does not mean that the lender has the right to dispose of the securities in such a way as to gain for himself an advantage out of the transaction, not contemplated by the parties.

The case of Lem v. Wilson, recently decided by the California District Court of Appeal, and published on page 680 of this number, presents an instance of sale of collateral, which could not stand the tests applied by the court.

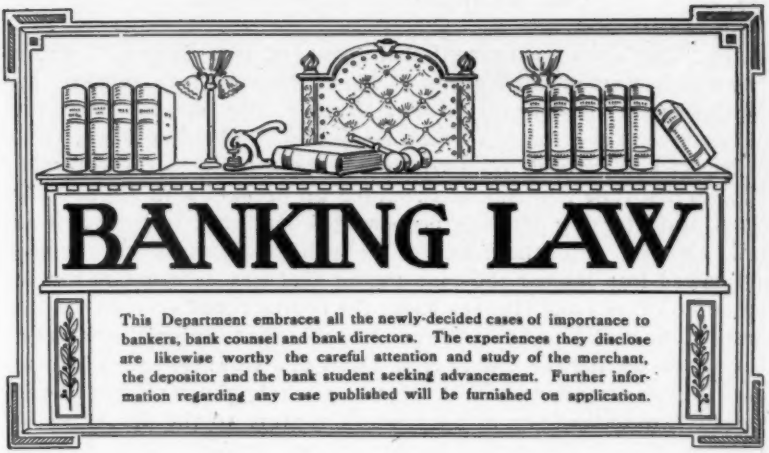
The plaintiff borrowed money from the defendant bank and, for security, delivered to the bank fifteen shares of the collateral stock of the bank. At the time of depositing the collateral he signed the following instrument:

"I hereby authorize Philip L. Wilson or assigns to sell and in my name indorse and transfer my stock in the Traders' Bank of Los Angeles and to apply the proceeds of the same to the payment of indebtedness, present or future, to said bank."

Philip L. Wilson, mentioned in the instrument, was the president of the defendant bank and was also a defendant in the action. On March 27th, 1913, the plaintiff was in the bank and, in a conversation which he had with the cashier, requested the cashier not to dispose of the stock until the plaintiff should have another opportunity to discuss the matter with the cashier. The cashier answered that he would not dispose of the stock and that he would see the plaintiff in the morning. On the following morning, at about 10 o'clock, the president sold the fifteen shares, deposited by the plaintiff as collateral, to one J.M. Best, "who happened at the time to be in the bank," at $110 per share. The sale was not advertised in any way and no notice of the intention to sell was given to the plaintiff.

It was established on the trial that the stock was actually worth $175 per share and that it would have brought that price if offered on the Los Angeles Stock Exchange. It also appeared that there was a contest on for the control of the bank in which the president was one of the competing parties and that he had bought stock himself on the day the plaintiff's shares were sold at $155 per share. The plaintiff showed further that he would have paid his note, had he been notified of the intention to sell his stock and that the president loaned Best the money with which to purchase the plaintiff's shares.

It was held that the bank was liable in no way for the loss sustained by the plaintiff, because of the fact that the plaintiff had authorized the president to act for him. The president, however, was held liable to plaintiff for the damages which he sustained by reason of the sale of his stock.



BANKING LAW

This Department embraces all the newly-decided cases of importance to bankers, bank counsel and bank directors. The experiences they disclose are likewise worthy the careful attention and study of the merchant, the depositor and the bank student seeking advancement. Further information regarding any case published will be furnished on application.

BANK HELD TO BE THE LOSER IN FINANCING LUMBER SHIPMENT.

People's State Bank v. Davis, Court of Civil Appeals of Texas, May 7, 1915. 178 S W. Rep. 671.

The defendant bank agreed with one Rigney to finance his shipments of lumber, by crediting to the account of the plantiffs, the vendors of the lumber, the amount due them from Rigney, upon receiving from Rigney the indorsed invoice and bill of lading covering the shipment. In certain cases the bank was unable to collect from the consignees of the lumber. It was held that the bank could not recoup its loss by charging back to the plaintiffs the amount theretofore credited to their account.

Appeal from District Court, Jasper County; A. E. Davis, Judge.

Action by G. W. Davis and another against the People's State Bank. From a judgment for plaintiffs, defendant appeals. Affirmed.

McMEANS, J. G. W. Davis and T. M. Hughes, composing the firm of the Cow Creek Lumber Company, brought this suit against the People's State Bank to recover $1,295.09 alleged by them to have belonged to them and to have been converted by the bank to its own use and benefit. A trial before the court without a jury resulted in a judgment for plaintiffs, and defendant has appealed.

The court upon proper request reduced to writing and filed its findings of fact; and, as none of them are attacked by appellant as not being supported by the testimony adduced upon the trial, we make our findings of fact therefrom.

Plaintiffs, Davis and Hughes, owned a small sawmill in Newton county which they, in the fall of 1908, leased to S. C. Rigney and one

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, § 74.

Wells. They also owned pine timber upon land around the mill, which they sold to Rigney and Wells at $7.25 per thousand feet, delivered on the skidway at the sawmill. About March 1, 1909, Rigney took over and assumed the contract between Davis and Hughes and Rigney and Wells, and Wells was released by all the parties to the contract. Prior to that time the bank was running an account with Rigney and Wells, and after that date this account was continued in the name of S. C. Rigney. After the release of Wells, Rigney operated the sawmill and sawed into lumber the pine timber that was delivered to him at the mill by Davis and Hughes under the contract, and shipped out the same. The bank knew that Rigney had rented the sawmill, and knew that he was buying the timber from Davis and Hughes, and it had entered into an arrangement with Rigney, whereby the bank agreed and undertook to finance him in his sawmill venture to the extent of 80 per cent. of each car load of lumber shipped through the bank. As Rigney would ship each car load he would indorse the invoice and bill of lading and deliver the same to the bank, and at the same time would deliver to Davis and Hughes, under their firm name of Cow Creek Lumber Company, an order upon the bank reading as follows:

"People's State Bank, Kirbyville, Texas—Gentlemen: Please credit Cow Creek Lumber Company as follows: [Giving the car number, amount of feet and price per thousand].

"[Signed] Yours truly, S. C. Rigney."

Upon the receipt of these orders the bank would credit the account of the Cow Creek Lumber Company with the amounts specified therein. Prior to the 15th of June, 1909, Rigney shipped through the bank 19 cars of lumber consigned to various parties, invoices and bills of lading of all of which were indorsed to and delivered to the bank, and for each of the 19 cars Rigney gave an order in favor of the Cow Creek Lumber Company for the amount which he owed for the lumber, which, for the 19 cars covered by said orders, amounted to $1,295.09, and the bank honored all of said orders and passed said sum to the credit of Davis and Hughes in their said firm name of Cow Creek Lumber Company. At the time of the shipment of the 19 cars Davis and Hughes and Rigney were operating under a contract which provided that upon presentation of the invoices to the bank the amount due Davis and Hughes for the timber represented by each car load should be deducted from the account of Rigney and credited to the account of the Cow Creek Lumber Company, and this contract was prepared by the cashier of the bank, and the bank had full knowledge of its terms, but was not a party thereto. When the bank received the invoices it undertook to collect from the consignees the amount thereof, and when collected it would place the same to the credit of Rigney, less the amount it had credited to the Cow Creek Lumber Company upon Rigney's orders. Davis and Hughes had no understanding with the bank by which they were to become responsible for the payment of the in-

voice price of the lumber shipped. They were permitted by the bank, and did without question, draw against the amounts that were credited by the bank to the account of the Cow Creek Lumber Company. On September 29, 1909, the bank having failed to collect from the consignees, of lumber shipped by Rigney the invoice value of the 19 cars heretofore mentioned, it charged back to Davis and Hughes, or the Cow Creek Lumber Company, the $1,295.09 with which it had credited their account upon the receipt of the invoices and orders from Rigney. To this Davis and Hughes strongly objected, and many times prior to the institution of this suit sought to have the amount credited back by the bank to their account, but the bank refused to do so. After so charging back said sum to the Cow Creek Lumber Company, the bank collected $751.28 from the consignees of said 19 car loads, with which sum it credited the account of the Cow Creek Lumber Company, leaving a balance uncredited of $543.81 for which, and interest, judgment was rendered in favor of plaintiffs.

Appellant by its first assignment of error complains that the judgment in favor of plaintiffs was erroneous, because the bank, as shown by the evidence, received the bills of lading and invoices from Rigney for the lumber shipped by him as a collecting agent only, and that such collections were handled by the bank in accordance with the usage and custom of banks and in the ordinary course of banking business; that due diligence was used by the bank in making such collections; that in accordance with the usage and custom of banks, and in the ordinary course of banking business, the defendant on receipt from Rigney of the invoices and bills of lading, accompanied by memoranda showing the amount due the Cow Creek Lumber Company, credited such items to said lumber company, subject to collection, and upon the failure of the bank to collect for a portion of the consignments it had the right to charge back to the account of the lumber company the uncollected items with which the lumber company had been credited. By its proposition under the assignment appellant asserts that:

"Where a bank receives paper for collection, which is credited to the depositor as cash, the bank is not liable to the depositor for the amount thereof, if the paper is worthless or is subsequently dishonored."

The proposition contains an abstractly accurate statement of the law, and if the facts were as stated in the assignment, there would be no difficulty in reaching the conclusion that the judgment should be reversed. In argument, appellant in its brief says that it should be borne in mind that this is not a contest between the bank and Rigney; that as between him and the bank no question is made that the bank received and handled the invoices and bills of lading as collections only; that the appellees contend that the same relations did not exist between them and the bank, and that under the facts proved the bank should be held liable to them absolutely and unconditionally for the amount due them for the timber, regardless of whether collections thereof were made

by the bank; that this contention was sustained by the trial court, and it was upon that theory that the judgment was rendered in favor of appellees, and that if this theory is correct, the judgment should be affirmed, but if incorrect it should be reversed. We do not think that the rule of law stated in the proposition has any application whatever to the facts of this case. The bank had agreed to finance Rigney to the extent of 80 per cent. of the value of each car load of lumber shipped by him where the invoices and bills of lading were indorsed and delivered to the bank. The bank knew of the arrangement between Rigney and Davis and Hughes, and, so knowing, it accepted orders from Rigney, directing the payment to Davis and Hughes of the amounts specified in them, which the bank knew was for the payment of the timber out of which the lumber was manufactured, and these amounts were paid to Davis and Hughes by crediting their account therewith, against which the latter were permitted to draw at their convenience. Having agreed to finance Rigney to the extent of 80 per cent. of the value of each shipment made under the circumstances stated, and the shipments in question having been made under such circumstances, and the bank under its agreement to finance Rigney having paid to Davis and Hughes in the manner stated the amount due them for the timber from which the lumber was manufactured, it was in no position, after having so paid them, to charge back to their account the amount so paid, and thus recoup itself for losses that it might sustain by reason of failure to collect from the consignees. Davis and Hughes, under these circumstances, did not occupy toward the bank the relation of one who deposits paper with the bank for collection and who is given immediate credit therefor when such deposit is made, but by crediting their account with the amount of the orders given by Rigney the relation of debtor and creditor was at once established between them and the bank, and the bank thereupon became unconditionally liable to them for the amounts thereof.

What we have said above sufficiently disposes of the second proposition under the first assignment of error, as well as the second and only other assignment.

We find no reversible error in the record, and the judgment of the court below is affirmed.

Affirmed.

SALE OF COLLATERAL BY BANK PRESIDENT AT INADEQUATE PRICE.

Lem v. Wilson, California District Court of Appeal, May 28, 1915. 150 Pac. Rep. 641.

The president of a bank, who was authorized by a borrower to sell stock, pledged to the bank as security for the loan, sold it without notice to the borrower,

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, § § 332, 386.

without advertising the sale, and at an inadequate price. It was held that the bank was not liable to the borrower for the loss thus sustained as the president was authorized to act for both parties. The president, however, was guilty of negligence and was liable to the borrower for the damages resulting from the sale at an insufficient price.

Appeal from Superior Court, Los Angeles County; Charles Wellborn, Judge.

Action by George C. Lem against Philip L. Wilson and the Traders' Bank of Los Angeles. From a judgment for plaintiff, defendants appeal. Affirmed as to the first-named defendant and reversed as to the bank.

J. W. McKinley, Frank Karr, and A. W. Ashburn, Jr., all of Los Angeles, for appellants. Shaw & Stewart; of Los Angeles, for respondent.

SHAW, J. This is an appeal by defendants from a judgment rendered in favor of plaintiff, prosecuted upon the judgment roll, accompanied by a bill of exceptions.

The action grew out of a sale made by defendant Wilson of corporate stock pledged by plaintiff to defendant Traders' Bank of Los Angeles, of which Wilson was president, as security for the payment of promissory notes made by plaintiff to the bank, which notes were on March 28, 1913, due and unpaid. Pursuant to instructions of the bank to collect the notes the stock, consisting of 15 shares of the capital stock of said bank, without any demand having ever been made upon plaintiff for payment, was by Wilson, in the lobby of the bank, immediately upon the opening thereof at 10 o'clock a.m., March 28, 1913, and without any advertisement thereof or other notice of sale, or notice given to plaintiff of his intention to sell the same, sold to one J. M. Best, who happened at the time to be in the bank, for the sum of $110 per share, and the proceeds thereof paid to the bank and applied in payment of plaintiff's notes. The only authority that Wilson had for selling the stock in the manner mentioned was a written instrument executed and delivered to him by plaintiff, at the time of depositing the collateral, as follows:

"I hereby authorize Philip L. Wilson or assigns to sell and in my name indorse and transfer my stock in the Traders' Bank of Los Angeles, and to apply the proceeds of the same to the payment of indebtedness, present or future, to said bank. [Signed] Geo. C. Lem."

Plaintiff's cause of action is based upon the alleged fact that the stock at the time was reasonably worth $200 per share, and that the act of Wilson in making the sale, without notice thereof or notice to plaintiff, at an early hour, in the bank, instead of at the Stock Exchange, which was the usual place for making such sales, was as to him wrongful and negligent to his damage in the sum of $90 per share. The court sustained plaintiff's contention, except that it found the value of the stock to be $175 per share, and gave judgment accordingly.

While the bank itself might have sold the stock in accordance with

the provisions of law authorizing the pledgee to sell pledged property. it also had the legal right to demand a sale of the pledged property by Wilson, whose relation to the parties, since he was acting for both, was in the nature of a trustee. The bank as pledgee did not sell the stock, and neither the evidence nor findings made by the court disclose any illegal or wrongful act on the part of the bank; hence the judgment rendered against the bank is unwarranted and must therefore be reversed.

Wilson was authorized to sell the stock and did, as found by the court, sell it to J. M. Best; hence it cannot be claimed there was any conversion thereof by him. Nevertheless, in acting as agent, even though the service was gratuitous, he would be liable to his principal for damages resulting from any gross neglect of duty which he owed to his superior. "An agent to buy or sell property for his principal will be liable for losses which the latter may sustain by reason of his negligence." 31 Cyc. p. 1460. Says Mr. Mechem in his work on Agency, § 1323:

"It is of course the duty of the agent charged with the sale of goods or other property to exercise reasonable care, skill, and diligence in the performance of his undertaking."

In Tate v. Marco, 27 S. C. 493, 4 S. E. 71, it is said:

"The law requires perfect good faith on the part of agents, not only in form, but in substance."

See, also, Hunsaker v. Sturgis, 29 Cal. 142, Sturges v. Keith, 57 Ill. 451, 11 Am. Rep. 28, Herrick v. Hodges, 13 Cal. 434, and Samonset v. Mesnager, 108 Cal. 354, 41 Pac. 337, to the effect that agents and trustees must act in good faith with ordinary diligence and sound discretion.

We are not called upon to consider other alleged errors than those specified in the bill of exceptions, and the only ones so specified are the insufficiency of the evidence to support certain findings made by the court, to the effect that on March 28, 1913, the shares of stock so sold by defendant Wilson could have been sold at and upon the Los Angeles Stock Exchange for the price of $175 per share; that said sale so made by him was made willfully, negligently, and fraudulently, in violation of plaintiff's rights; that Wilson failed and refused to make any public offering of said shares of stock in such manner as to bring said shares to the attention of possible customers other than said J. M. Best, which neglect and refusal on the part of Wilson were due to the fact that he desired to sell said stock to some person who would act with him in maintaining control of the bank, and hence failed to give publicity to the sale by advertisement or otherwise, or sell the same on the Los Angeles Stock Exchange, for the reason that he feared some person adverse to him would buy it. It appears without contradiction that on March 27, the day before the sale, the cashier of the bank had two or three talks with plaintiff in an effort to induce him to sell the stock, one of which conversations was in the evening of the 27th,

wherein he asked plaintiff if he had disposed of his stock, and, receiving a negative answer, replied, "Don't dispose of it until you see me." And upon plaintiff making inquiry as to a demand for the stock, the cashier again said, "You won't dispose of it until you see me, will you?" to which plaintiff replied, "No; I will see you in the morning." There is also evidence to the effect that a contest was pending for control of the bank between defendant Wilson, its president, and another party, and that sales of stock were made on the Stock Exchange on March 28, 1913, at upwards of $175 per share; that defendant Wilson bought stock himself on said day at $155 per share; that Best made the purchase of the stock at the request of Wilson, who testified that he loaned him the money with which to make the purchase. Further testifying, he says:

"I didn't charge him interest on the loan. This was my own personal money, and when I make a personal loan, I very rarely charge any of my friends interest." ("For when," said Antonio, "did friendship take a breed of barren metal of his friend.") "I did not take any note. I took the stock off his hands. That was perhaps a month later."

From this and other evidence the tendency of which was to establish such fact, it conclusively appears that Wilson, as found by the court, was desirous of obtaining control of this stock, and using the power of attorney so given him by plaintiff he, for that purpose, without notifying plaintiff—who it appears would have paid his note promptly—or advertising the sale, sold it in the bank lobby at 10 o'clock a.m. for $110 per share; that his purpose in so doing was to prevent others then interested in acquiring the same from purchasing it; that although no demand was made upon plaintiff for the payment of his note, he did, a few minutes after the sale had been made and without having knowledge that the stock had been sold, appear at the bank and, ascertaining the amount due, presented a check in payment of the same, which the bank refused, and for the first time informed him of the sale; that had notice of the sale been given and the pledged property sold at the Los Angeles Stock Exchange, it would have brought $175 per share. Under these circumstances, to hold that plaintiff cannot recover damages sustained by reason of the acts of his agent would be to countenance the grossest fraud. Foote v. Utah Savings Bank, 17 Utah, 283, 54 Pac. 104.

Counsel for appellant devotes much of his argument to a contention that by virtue of a collateral agreement authorizing the sale in the manner in which this stock was sold of certain other stock deposited as additional security for the payment of the notes (and which, notwithstanding the proceeds of the stock sold by Wilson were inadequate to pay the notes, the bank did not sell) likewise authorized the sale of the stock in question. Suffice it to say that that agreement made no reference to the stock which Wilson sold, and which, aside from general authority under the law to sell pledged property, he had no power to sell

save and except by virtue of the power of attorney given him so to do.

For the reasons heretofore mentioned, the judgment against the bank is reversed, and as to defendant Wilson the same is affirmed.

We concur: CONREY, P. J.; JAMES, J.

NOTE SENT TO BANK FOR COLLECTION WITHOUT SPECIFIC INSTRUCTIONS.

Citizens' Savings Bank & Trust Company v. Northfield Trust Company, Supreme Court of Vermont. May 15, 1915. 94 Atl. Rep. 302.

Where a note is sent to a bank for collection, the only instructions being to "collect and remit," the bank is obliged to present the note for payment and, upon dishonor, to take the necessary steps to charge the parties. Its default in this regard renders it liable to the owner of the note, even though it made no charge for the collection.

Exceptions from Caledonia County Court; William H. Taylor, Judge.

Action by the Citizens' Savings Bank & Trust Company against the Northfield Trust Company. Judgment for the plaintiff, and defendant excepts.

Judgment affirmed.

MUNSON, C. J. The only instructions given the defendant were contained in the words, "collect and remit," and there is no statement that the defendant undertook to protest and give notice to indorsers. It is stated that the defendant undertook the collection in the course of its ordinary business, but there is no statement that it expected to be paid for the service, and none that it is customary for collecting banks to protest and give notice. So the defendant presents for our consideration the question whether a collecting bank is bound, in the absence of specific instructions, to protest and notify in case of nonpayment. We have no case dealing with this question, but the law of the subject has long been settled in other jurisdictions. See note 77 Am. St. Rep. 613.

A statement that the note is sent for collection, without more, determines the duty of the collecting agent. The acceptance of negotiable paper thus sent carries with it an implied undertaking to make the demands and give the notices required by the law merchant. Allen v. Merchants' Bank, 22 Wend. (N. Y.) 215, 34 Am. Dec. 289, 294. The purpose of sending a note for collection is to secure payment from all who are liable upon it, and to omit giving notice of the dishonor is to neglect a part of the obvious and legal means of collection. Thompson v. Bank, 3 Hill (S. C.) 77 30 Am. Dec. 354.

If any special contract was made, or special instruction given, it

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, §§ 116, 118.

was for the defendant to state. Fabens v. Mercantile Bank, 23 Pick. (Mass.) 334, 34 Am. Dec. 59.

The defendant can derive no benefit from the omission to state that it is customary for collecting banks to protest and give notice. The requirement is not one of custom but of general law. Exchange Nat. Bank v. Third Nat. Bank, 112 U. S. 276, 5 Sup. Ct. 141; 28 L. Ed. 722. The sender of the note can rely on the established rule of the law merchant, until the collecting bank shows some modification of it by local usage, of which the sender had, or ought to have had knowledge. See Lincoln Bank v. Page, 9 Mass. 155, 6 Am. Dec. 52; Bank of Washington v. Triplett, 1 Pet. 25, 7 L. Ed. 37.

The fact that the bank charges nothing for the collection is immaterial. The general benefit which the bank derives from the making of such collections is regarded as a consideration for the undertaking sufficient to uphold the liability. Bailie v. Augusta Sav. Bank 95 Ga., 277, 21 S. E. 717, 51 Am. St. Rep. 74. The taking of the paper for collection in the usual course of business is sufficient evidence of a valuable consideration. Exchange Nat. Bank v. Third Nat. Bank, 112 U. S. 276, 5 Sup. Ct. 141, 28 L. Ed. 722. Judgment affirmed.

DIRECTOR LIABLE TO BANK ON HIS ACCOMMODATION NOTE.

Skagit State Bank v. Moody, Supreme Court of Washington, July 26, 1915. 150 Pac. Rep. 425.

The defendant, a director in the plaintiff bank, gave his note without consideration to the bank, to cover the interest due on the worthless note of a corporation held by the bank, the object being to enable the bank to pass the approaching inspection of the bank examiner. There was an understanding that the note was to be returned to the defendant. Thereafter the management of the bank changed and an action was brought on the note. It was held that the note was for the accommodation of the corporation, which made the other note, and not for the accommodation of the bank and that the defendant was liable.

Department 1. Appeal from Superior Court, Skagit County; William H. Pemberton, Judge.

Action by the Skagit State Bank against S. L. Moody. Judgment for the defendant, and plaintiff appeals. Reversed and remanded, with directions.

CHADWICK, J. On the 11th day of April, 1910, respondent was a director of the appellant bank. Appellant held a note known as the Cain Bros., note, or the Darrington Mill note, in the principal sum of $8,000, upon which the interest had so long defaulted that the State Bank Examiner had directed that the interest be collected or the note

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement, § 19, 20.

charged off. The note had been originally taken by R. M. Moody and L. L. Moody, brother and nephew of respondent, and had been by them indorsed over to the bank without recourse. L. L. Moody was the president of appellant bank.

Seemingly in anticipation of a call from the State Bank Examiner, L. L. Moody, P. M. Moody, R. M. Moody, Ollie Moody, and one Fellows, a then stockholder and later cashier of the appellant, met at the home of respondent, and it was decided that respondent and his brother R. M. Moody should each give a note for the sum of $500, payable to the bank, to take up the overdue interest on the Cain Bros., note. These notes were given, carried into the bank's bills receivable, and the amount thereof placed to the credit of the overdue interest account as a payment on the Cain Bros., note. The payment was also indorsed thereon. The control of the bank thereafter passed out of the hands of the Moody family. The note of respondent was not paid when due.

To an ordinary complaint respondent answered, admitting the execution of the note, and pleaded affirmatively: (a) That there was no consideration for the note; (b) that it was given for the accommodation of the bank and for the purpose of deceiving the bank examiner, and was therefore void; (c) that there was an express understanding that the note should be thereafter returned to respondent; and (d) that, after the execution of the note, Fellows and one Davis bought the control of the bank and agreed and promised to return respondent's note to him. A demurrer to these affirmative defenses was overruled, and the case went to trial. From a judgment entered upon a verdict in favor of respondent, this appeal is taken.

Respondent contends that, inasmuch as the Cain Bros. note was known to be worthless at the time the note sued on was given, there was no consideration in law to sustain his promise. The question of consideration was the only question submitted to the jury by the trial court. Granting but without holding that respondent could set up a collateral oral agreement that he was not to be bound by his promise, it seems to us that there was a sufficient lawful consideration for the note. The position of respondent is that the note was given for the accommodation of the bank, and that one for whom an accommodation is made cannot sue directly upon the promise; that as between the bank and respondent, the note being given to accomplish an illegal purpose, the law will leave the parties where they have placed themselves (that is, without remedy, one against the other).

While the note was given for the accommodation of the bank in a a certain sense (that is to say, its consequence was to save the bank from the aspersions of the agent of the state and a possible finding of insolvency), it was nevertheless, and in law entirely so, given for the accommodation of the Cain Bros. An accommodation note is one given as collateral to the promise or obligation of another. It neither asserts

or implies a consideration flowing direct from the payee to the maker. The note is supported by the obligation of the principal debtor. It is the fact that the maker receives no value therefor that gives the paper its character as accommodation paper. Rem. & Bal. Code, § 3420.

Respondent relies upon the case of First National Bank of Storm Lake v. Felt, 100 Iowa, 680, 69 N. W. 1057, and Woodbury v. Glick, 151 Iowa, 648, 132 N. W. 67. These cases may be distinguished from the case at bar. While it was held that no recovery could be had upon notes given to cover loans to third persons made in excess of the legal limit and to thus satisfy the law and the demands of bank examiners, the bank being solvent and no rights of creditors being involved, it was nevertheless made to appear that the taking of the notes sued on was a banking transaction made by a bank otherwise solvent, with full knowledge and at the instance of the officers and directors of the bank. The transaction was in the one case expressly ratified at a directors' meeting, and in the other there was not only actual notice but by a long-continued practice which would impute notice to all concerned whether there was actual notice or not. In the case at bar the note was taken after a conference of what one of the witnesses admits was the "Moody family." The remaining directors testified that they had no knowledge of the transaction. One of them testifies to a seeming purpose on the part of those most heavily interested in the bank to keep the outsiders, the other directors, in ignorance of its affairs.

But, aside from these considerations, we are of opinion that there was a consideration for the note. It is not denied but admitted in terms by respondent and by the others, who had knowledge of the facts, that the note was given as a present payment of the overdue interest on the Cain Bros. note. Payment of interest was actually indorsed on the Cain note. The substitution of the note for the overdue interest was in legal effect a parting with a consideration by the bank. The indorsement of a payment was a waiver of present right of action against Cain Bros., a sufficient consideration under all authority. The bank, or rather its officers and principal stockholders, had put themselves in "a worse position," as the books say, in so far as the Cain Bros. note was concerned. To illustrate, had the bank examiner actually ordered the officers to make the Cain Bros. note good, and had they gone out and obtained respondent's note and presented it to him as a payment of the interest, the bank could not at that time, even upon his order, have sued Cain Bros. By its own act and the accommodation of respondent, it had made the paper "prime." Or again, if on the next day the bank had sued on its own account, it could not repudiate the payment of the interest as an illegal transaction without pleading the fraud of its officers and some of its stockholders, the disclosure of which would certainly have made its complaint subject to a demurrer.

Respondent seems to understand that a showing of no considera-

tion to him moving is sufficient to satisfy the law. On the contrary, it is only where there is an absence of or failure of consideration to sustain the obligation that the defense is available. If two or more sign a note, the defense of no consideration is not available to the one who signed but who received none of the proceeds. The accommodating party is bound by the consideration moving to the other party, and will not be heard to plead, as against the holder of the note, whether in the first hand or in that of an indorsee, no consideration or even the defense of suretyship. See Anderson v. Mitchell, 51 Wash. 265, 98 Pac. 751; Pitt v. Little, 58 Wash. 355, 108 Pac. 941; Aurora Land Co. v. Keevan, 67 Wash. 305, 121 Pac. 469. Finding that the payment of the interest on the Cain Bros. note is a sufficient consideration, we have passed, without opinion, the question of public policy. That is, the right of the respondent to plead a fraud upon the law to defeat the terms and tenor of his obligation. State Bank of Moore v. Forsyth, 41 Mont. 249, 108 Pac. 914, 28 L. R. A. (N. S.) 501; Pauly v. O'Brien (C. C.) 69 Fed. 460. In the Forsyth Case the court found a consideration, after a discussion of the law with several strictures upon a transaction similar to the one now under inquiry. In the Pauly Case the bank was insolvent.

However, it will not be out of place to say that the insistence of counsel for respondent at the trial that the transaction being conceived and carried out by the parties in fraud of the law makes the note void as between the parties is without merit. It is only where a note is given in consideration of an illegal transaction that it is void. The transaction between respondent and the bank was a lawful thing. Respondent willingly loaned his credit to the Cain Bros. note. He intended it as a payment of their overdue interest. There is no suggestion of fraud or deception or that he misunderstood the purpose of it. It is the relation of debtor and creditor existing between the bank and Cain Bros., and not the illegal purpose mentally reserved by the parties, that sustains the transaction.

Courts will not lightly overturn the ordinary transactions of men, legal and binding on their face, to work out an ulterior purpose resting in parol and fraud. Where an obligation otherwise lawful is challenged as working a collateral fraud, a court will look first for a lawful ground upon which to rest its judgment rather than look for an excuse to overturn it.

Respondent's obligation is prima facie binding. His act was voluntary. He knew its purpose and that it was accomplished. He will be held to his promise.

Reversed and remanded, with directions to enter judgment in accordance with this opinion.

MORRIS, C. J., and PARKER, MOUNT, and MAIN, JJ., concur.

INDORSER'S RIGHT OF SET-OFF.

Curtis v. Davidson, New York Court of Appeals, June 18, 1915, 109 N. E. Rep. 481.

In an action by the receiver of an insolvent bank, against the indorser of notes held by the bank, the indorser may set off his deposit in the bank against his liability as indorser, even though the makers of the notes be solvent, since the possibility of a preference thus resulting to the indorser is speculative and uncertain

Appeal from Supreme Court, Appellate Division, First Department.

Action by Rensselaer L. Curtis, as receiver of the Atlantic National Bank, against Henry Davidson. From an order of the Appellate Division (164 App. Div. 597, 150 N. Y. Supp. 305), affirming an order denying plaintiff's motion for judgment on the pleadings, plaintiff appeals. Affirmed.

See, also, 151 N. Y. Supp. 1111.

SEABURY, J. The plaintiff, as receiver of an insolvent national bank, sues the defendant as indorser upon 19 separate promissory notes made by various makers. The answer set up by way of defense and counterclaim that at the time of the suspension of the bank the defendant had on deposit $647.66, and offers to pay the amount of a notes sued upon, less this sum.

The Appellate Division has certified two questions to this court, to wit: (1) Is the separate and distinct defense alleged in the answer sufficient in law, upon the face thereof, as a defense to the cause of action set up in the complaint? (2) Is the separate and distinct defense pleaded in the answer sufficient in law, upon the face thereof, as a set-off or a counterclaim to the 19 causes of action alleged in complaint?

While an indorser is said to be secondarily liable, the holder of a note may sue both the maker and the indorser or either. An indorser, sued upon his contract of indorsement, is absolutely liable thereon. It is not a defense for him to plead in such an action that the maker is solvent. When sued, the indorser stands for the purpose of that action in the same position as the maker, except that he is absolutely liable upon his contract of indorsement, while the maker is absolutely liable upon the note. In such an action against him he may set off against his obligation as indorser any debt which the holder of the note may owe to him. In this respect the maker and indorser stand in the same position. The allowance of such a set-off is not a direct preference, because, where there are mutual demands, the amount of the debt due from one to the other is the difference between these mutual demands. The fact that the indorser may, if the maker is solvent, be indemnified by him in addition to being allowed to set off the amount of his deposit against the insolvent holder, does not preclude the indorser's right of set-off. The possibility of a preference thus resulting to the indorser is speculative and uncertain. In order to defeat the indorser's right

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, § 61.

of set-off, it must appear that he has more than a speculative or uncertain chance of indemnity from the maker. When the indorser seeks equitable relief, and proceeds affirmatively against the holder of the note to have the indebtedness of the holder to him set off against his obligation to the holder, it may be that a court of equity would require that he give some satisfactory assurance that he will not be indemnified by the maker. Where the indorser is himself sued, he may plead as a set-off the indebtedness of the holder to him, and the fact that the holder is insolvent does not deprive the indorser of his right of self-defense. In the presence of mutual demands existing between the holder of the note and the indorser, the debt due is the balance that remains after one has been set off against the other.

The party claiming that the debt due is more than the balance, which is the prima facie amount of the debt, has resting upon him the burden of proving the fact upon which his claim rests. In the case under consideration, upon the pleadings as they stand, the defendant was entitled to set off the amount due him from the bank. The authorities in this state, as well as in other jurisdictions, sustained the view expressed above. In Matter of Receiver of Middle District Bank (1829) 1 Paige, 585, 19 Am. Dec. 452, a receiver of an insolvent bank applied to Chancellor Walworth for instructions, and in answer to the question propounded the chancellor said that, if the real debtor was unable to pay, the indorser could offset his deposit with the bank, and added:

"But no such off-set should be allowed to an indorser, where he is indemnified by the real debtor, or where the latter can be compelled to pay."

This statement by Chancellor Walworth has been extensively commented upon and followed, and we think that it states the rule which still prevails in cases of equitable set-off, or in cases where a depositor proceeds against the bank in order to have the amount of his deposit set off against the amount due from him. In such a case the burden is upon the depositor seeking equitable relief to establish that equitably such relief may be given him. It has been repeatedly held that stututory provisions against according a preference to those having claims against an insolvent estate do not prohibit the allowance of a set-off, whether legal or equitable, which a debtor may have against the obligations due from him to the bank at the time of its insolvency. Armstrong v. Warner, 49 Ohio St. 376, 390, 391, 31 N. E. 877, 17 L. R. A, 466; Receivers v. Paterson Gaslight Co., 23 N. J. Law, 283; N. Y. County National Bank v. Massey, 192 U. S. 138, 148, 24 Sup. Ct. 199, 48 L. Ed. 380; Scott v. Armstrong, 146 U. S. 499, 510, 512, 13 Sup. Ct. 148, 36 L. Ed. 1059; Yardley v. Clothier (C. C.) 49 Fed. 337, affirmed 51 Fed. 506, 2 C. C. A. 349, 17 L. R. A. 462.

In Hughitt v. Hayes, 136 N.Y. 163, 167. 32 N. E. 706, this court siad:

"While it is the general rule, in the administration of the estate

of an insolvent, that equality among creditors is equity, it has never been decided, either under the statute of set-off or by courts of equity in applying the doctrine of equitable set-off, that the rule of equality among creditors requires courts to ignore the principle that only the balance, in case of mutual debts, is the real sum owing by or to the insolvent."

In Scott v. Armstrong, supra, it was said that:

"Where a set-off is otherwise valid, it is not perceived how its allowance can be considered a preference, and it is clear that it is only the balance, if any, after the set-off is deducted, which can justly be held to form part of the assets of the insolvent. The requirement as to ratable dividends is to make them from what belongs to the bank, and that which at the time of the insolvency belongs of right to the debtor does not belong to the bank."

In Building & Engineering Co. v. Northern Bank of N. Y., 206 N. Y. 400, 99 N. E. 1044, which was an action in equity, the plaintiff, as accommodation indorser upon a promissory note, was liable to an insolvent bank, and at the same time had a deposit to its credit in the bank, and it was held that the plaintiff could elect to have such note become due at once, and require the bank to set off the same against the deposit in the bank to his credit.

The order should be affirmed, with costs, and the questions certified answered in the affirmative.

WILLARD BARTLETT, C. J. and HISCOCK, COLLIN, CUDDEBACK, HOGAN, and CARDOZO, JJ., concur.

Order affirmed.

PROVING NOTICE OF DISHONOR.

First National Bank of Manistee v. Star Watch Case Company, Supreme Court of Michigan, July 23, 1915. 153 N. W. Rep. 722.

When the cashier of a bank who, as notary, protested a note held by the bank, testifies that he mailed notice of dishonor to the indorser, testimony by the payee that he saw the note three days after the notary claimed to have written a memorandum of protest on the face of the note, and that there was then no such memorandum thereon, raises a question of fact as to the giving of notice, which the jury must decide.

Error to Circuit Court, Mason County; Chas. A. Withey, Judge.

Action by the First National Bank of Manistee against the Star Watch Case Company of Ludington. There was a judgment for defendant, and plaintiff brings error. Affirmed.

A. A. Keiser, of Ludington (Howard L. Campbell, of Manistee, of Counsel), for appellant. David K. Tone, of Chicago, Ill., and Robert J. Quail, of Ludington, for appellee.

KUHN, J. This is a suit brought by the plaintiff to recover on a note given by the Manistee Watch Company to the defendant company

NOTE.—For other similar decisions see Banking Law Journal Digest § 328.

for the sum of $5,994, and which note was discounted by the plaintiff upon its being indorsed by the defendant. At the maturity of the note it was dishonored by non-payment; the Manistee Watch Company being unable at the time to meet the demand. The note on its face was a foreign bill of exchange, being dated at Chicago, March 24, 1910. On its being dishonored, the plaintiff, according to its claim, took the proper legal steps to bind the defendant to its obligation as indorser upon the note, and, the defendant not having met its obligation as indorser, this suit was instituted to enforce the obligation.

Mr. George A. Dunham, who is the cashier of the plaintiff bank and also a notary public, testified that on March 24, 1911, it being the day on which the note fell due, he presented it for payment to the bank where the note was made payable, and that, payment not having been made, he sent a notice of the nonpayment to the Star Watch Case Company of Ludington, Mich., and that afterwards he wrote up and attached a certificate of protest to the note, and that later on the same day he wrote across the face of the note:

"Protested for nonpayment March 24, 1911.
"G. A. Dunham, Notary Public."

He further claimed that he took the notice and personally carried it to the post office and there deposited it, it being enclosed in an envelope directing it to be returned to the bank in five days. On the hearing of the case, testimony was admitted by the trial judge to show that the notice of nonpayment was not received by the appellee. It also appears that Mr. Rath, who was the president of the Manistee Watch Company, testified that on March 27th, three days after the note was due, he saw Mr. Dunham, who asked him at that time what he was going to do about the note, and that he was shown the note, and that the words "Protested for nonpayment March 24, 1911," were not written thereon at that time.

Counsel for appellant thus state the only question which is before us for review:

"The question in this case, then, is simply whether the evidence offered by the defendant of its nonreceipt of the notice was competent and proper proof to be submitted to the jury in contradiction of the sworn testimony of the notary upon the witness stand that such notice was given in the manner required by law."

Section 107 of Act 265, Public Acts 1905, which act is known as the "Negotiable Instruments Act," provides:

"Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails."

As a preliminary question, counsel for appellant contend that the court erred in instructing the jury that the burden of proof rested upon plaintiff to establish the fact of mailing the notice, and that the failure to receive notice is rather matter of affirmative defense, special notice of which must be given under circuit court rule 7b. We are of the

opinion, however, that the trial judge correctly charged that the burden of proof rested upon the plaintiff to show a compliance with the statutory provisions in order to hold the indorser, as the liability of the indorser depends entirely upon compliance with the statute as to notice. This is sustained by the following authorities: Commercial National Bank v. Zimmerman, 185 N. Y. 210, 77 N. E. 1020; Robinson v. Aird, 43 Fla. 30, 38, 29 South 633; Rolla State Bank v. Pezoldt, 95 Mo. App. 404, 411, 69 S. W. 51.

It must be conceded that by virtue of the Negotiable Instruments Act it is of no importance whether or not the notice required by the statute is received, if it appears that the notice of nonpayment was placed in the mail as required by the statute. And the question here is whether under the circumstances of this case any question of fact can be raised as to whether or not the notice of nonpayment was actually deposited in the post office as testified to by the cashier. It is true that where a disinterested witness, a notary public, testifies that such notice was properly mailed, or where a properly executed certificate of such a notary public showing such mailing is introduced in evidence, testimony of nonreceipt of the notice has been held immaterial. Bunker on Negotiable Instruments, p. 163, and cases cited. In Roberts v. Wold, 61 Minn. 291, 63 N. W. 739, the court said:

"Evidence that a communication alleged to have been sent by mail was never received may, in many cases, justify a verdict of finding that it was never sent; but such evidence, standing alone and uncorroborated, is not sufficient to overcome the probative force of the solemn official certificate of a notary public to his act of protest. The reasons for this rule are fully stated in Wilson v. Richards, 28 Minn. 337 [9 N. W. 872]."

But in the case before us we are not dealing with the certificate of a notary public, nor with the testimony of what we conceive to be a disinterested witness. The facts here presented are very similar to those in the case of Kingsland Land Company v. Newman, 1 App. Div. 1, 36 N. Y. Supp. 960, in which case the court said:

"The question presented was whether the notice of nonpayment had been deposited in the post office Vail testified that he personally deposited it, properly directed, with the postage prepaid. But the note was then held by the Commercial Bank, and Vail was its cashier and a notary public, who undertook to present and protest the commercial paper held by it. He was not a disinterested witness, and we are of the opinion that the credibility of his testimony was for the jury to determine. In Bank v. Diefendorf, 123 N. Y. 191, 25 N. E. 402 [10 L. R. A. 676], in speaking of the relation of a cashier to his bank, the court said: 'The claim that the plaintiff's cashier was a disinterested witness, whose testimony must be regarded as controlling, if not contradicted, cannot be sustained. * * * He was the financial agent of the plaintiff, and responsible to his principal for the care, fidelity, and prudence with which he discharged his official duties. His interest in the transaction was coextensive with that of the plaintiff, and brings him directly within the cases which hold that the credibility of such a

witness is a question for the jury to determine.' We are of the opinion that Vail's relation to the bank was such that the jury should have been permitted to determine whether his testimony was to be believed. The fact that the notice had not been received by the appellant, though it would have been of very little weight against the positive testimony of a disinterested person that it had been deposited in the post office, was yet a circumstance which, in this case, the appellant was entttled to have the jury consider."

We are of the opinion that the fact that Mr. Dunham was an officer of the bank, and in that way an interested witness, and the testimony of Mr. Rath as to seeing the note without any writing thereon three days after it was claimed by Mr. Dunham that he made the memorandum, constitute sufficient evidence to raise a question of fact as to whether or not the notice was actually mailed, and justify the court in submitting this question to the jury.

The judgment must therefore be affirmed.

The late Justice McAALVAY took no part in this decision.

IMPLIED WAIVER OF PRESENTMENT AND NOTICE.

Dillon v. Bron, Supreme Court of Kansas, July 10, 1915. 150 Pac. Rep. 553.

When the indorser of a note, at the time of indorsement and again at maturity, tells the indorsee that he will look after the note and that the money will be in his hands, presentment and notice of dishonor are waived.

Appeal from District Court, Sedgwick County.

Action by Ruth Dillon against Charles Bron and others. Judgment for the defendants, and plaintiff appeals. Reversed, and new trial directed.

Blake & Ayres, of Wichita, for appellant. E. D. Kimball, Kos. Harris, and V. Harris, all of Wichita, for appellees.

MARSHALL J. This is an action on a promissory note. Judgment was rendered against the plaintiff on a demurrer to her evidence. She appeals.

The action was commenced February 7, 1912. The note is dated June 21, 1911, and is signed by defendants Charles and Anna Bron. It was given to defendant E. D. Kimball, and was indorsed by him as follows:

"Pay to the order of Ruth Dillon. "E. D. Kimball."

The petition alleges that defendant E. D. Kimball promised to see that the note was paid when it became due, and that the plaintiff relied upon this promise. The plaintiff's evidence tends to show that, before the purchase of the note by the plaintiff, defendant Kimball

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, § 331, 408.

promised that he would look after the note, that he would indorse it and put his name upon it, and stated that the money would be in his hands. On the day the note was due, the plaintiff talked to defendant Kimball over the telephone, and asked him if he remembered the note was due on that day, and if he would look after it. Kimball said he would. The plaintiff called him a number of times over the telephone after that, and asked him if the note had been taken care of, to which inquiries he replied that it had not, The note was not presented to the maker for payment. Other than as above set forth, no notice was given to defendant Kimball that the note had not been paid. The court excluded certain evidence offered by the plaintiff. It does not appear that this evidence was produced at the hearing of the motion for a new trial.

Was the demurrer to the evidence properly sustained? This depends upon whether or not defendant Kimball, under the promises made by him to the plaintiff, was excused from paying the note by the failure of the plaintiff to present the same to the maker when it became due, and to notify the defendant Kimball of its nonpayment. Section 5319 of the General Statutes of 1909 reads:

"Every indorser who indorses without qualifications * * * engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it."

Section 5342 is as follows:

"Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged."

Section 5362 reads:

"Notice of dishonor may be waived, even before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied."

What was the effect of the statements made by defendant Kimball, the indorser of this note, to the plaintiff, at the time of the negotiation, and on the day the note became due? At the time the note was negotiated, he promised to look after it, and stated that the money would be in his hands. On the day the note became due, he told the plaintiff he would look after it. This was, in effect, waiver of presentment and of notice of dishonor of the note. This case is closely analogous to Markland v. McDaniel, 51 Kan. 350, 32 Pac. 1114. 20 L. R. A. 96, where this court said:

"Where indorsers of a negotiable promissory note tell the holder before maturity not to do anything with the note, and that they will pay it, it is unnecessary, in order to charge them as such indorsers, that formal demand of payment be made on the maker, and notice

given to the indorsers of his failure to pay, but demand and notice will be deemed waived." Syl. par. 1.

Again, in Glaze v. Ferguson, 48 Kan. 157, 29 Pac. 396, this court said:

"That the presentment of a note, as well as protest and notice, can be dispensed with by agreement or waiver, is a familiar doctrine of the text-books. The waiver may be either verbally or by writing; it may be expressed in strict terms or inferred from the words or acts of the party. It may result from any understanding between the parties which is of such a character as to satisfy the mind that a waiver is intended." 48 Kan. 159, 29 Pac. 397.

It follows that the demurrer to the evidence should have been overruled. The judgment is reversed, and a new trial is directed. All the justices concurring.

PAYMENT BY SAVINGS BANK WITHOUT PRODUCTION OF PASS BOOK.

Brooks v. Erie County Savings Bank, New York Supreme Court, Appellate Division, July 7, 1915. 154 N. Y. Supp. 692.

A savings bank by-law, permitting the secretary to waive the production of the pass book, upon a withdrawal by a depositor applies to joint as well as individual accounts. Where an account, standing in the joint names of husband and wife, is paid by the bank to the husband, without requiring the production of the pass book, the bank is not liable in an action by the wife.

Appeal from Erie County.

Action by Rita Brooks against the Erie County Savings Bank. From a judgment for plaintiff, and from an order denying defendant's motion for a new trial, defendant appeals. Reversed, and complaint dismissed.

Argued before KRUSE, P. J., and ROBSON, FOOTE, LAMBERT, and MERRELL, J.J.

KRUSE, P. J. Concededly, under the form of the account in question, the defendant was authorized to pay the deposit to either the plaintiff or her husband. I think the rule of the bank permitting the secretary to waive the production of the passbook applies to joint accounts such as this, as well as that of a single individual, and that the defendant had the right to waive the production of the passbook, as provided by the by-law under which the deposit was made, and that such waiver on the part of the bank is not contrary to the provisions of section 152 of the Banking Law.

I am also of the opinion that, in the absence of any circumstances tending to show that the defendant had knowledge or notice sufficient to put it upon inquiry that the husband was not entitled to draw the deposit, no question of fact was presented as to its negligence. Upon

NOTE.—For other similar decisions see Banking Law Journal Digest, § 424.

the undisputed evidence, I think it should be held that the defendant was justified in paying the deposit to the plaintiff's husband, and that defendant's motion to dismiss the complaint should have been granted.

If I am right in this conclusion, it follows that the judgment should be reversed, and complaint dismissed, with costs, including costs of this appeal. All concur, except FOOTE and MERRELL, JJ., who dissent.

FOOTE, J. (dissenting). Since the defendant's by-law permitting its secretary to "waive the production of the passbook in case of its loss, or where the depositor resides out of the city of Buffalo, or in other exceptional cases where, in the opinion of the secretary, the passbook cannot be procured without loss or serious inconvenience to the depositor" is a form of by-law which is expressly authorized and provided for by section 152 of the Banking Law (chapter 10, Laws 1900); and since that section of the statute provides that "no savings bank shall * * * pay any interest or deposit, or portion of a deposit, or any check drawn upon itself by a depositor unless the passbook of the depositor be produced, and the proper entry be made therein at the time of the transaction," I am of the opinion that the by-law in question was not made exclusively for the benefit of the defendant bank, and that it is not a by-law which the defendant can waive. I also think that this by-law was a part of the contract between the plaintiff and the bank in reference to her deposit, upon which she had a right to rely, and that the question of fact as to whether the secretary was authorized to waive the production of the passbook and pay the check without its production was properly submitted to the jury and that their verdict upon that question should not be disturbed.

In view of the instructions of the trial court to the jury, I think there was no error in the receipt of evidence which should lead to a reversal of the judgment.

Judgment and order appealed from should be affirmed, with costs.

MERRILL, J., concurs.

BANK'S LIEN ON STOCK IN NAME OF TRUSTEE.

Porter v. Marine Savings Bank, Supreme Court of Michigan, June 7, 1915. 153 N. W. Rep. 19.

Where a bank has knowledge of the fact that certain shares of its stock are held by the record owner as trussee for the real owner, the bank has no lien on the stock for an indebtedness, owing to it by the trustee and can be compelled to transfer the stock to the name of the real owner.

Appeal from Circuit Court, St. Clair County, in Chancery; Eugene F. Law, Judge.

Suit by Faye L. Porter against the Marine Savings Bank and others. Decree for complaint, and defendants appeal. Affirmed.

STONE, J. The proposition that a lien will not attach to stock held

NOTE.—For other similar decisions see Banking Law Journal Digest, § 458.

in trust, where the bank has knowledge it is so held, is well supported by the authorities. Alexandria Mechanics' Bank v. Seton, 1 Pet. 299, 7 L. Ed. 152. In that case, as here, the bill was filed against the bank to compel the transfer of stock. The stock was standing in the name of one Lynn, but it was avowedly purchased and held by him as trustee for one Wise. The transfer had been refused because Lynn was a debtor to the bank. It became necessary to construe section 21 of the Act of Congress incorporating the bank. That section provided:

"That the shares of the capital stock shall be transferable at any time, according to such rules as may be established by the president and directors; but no stock shall be transferred, the holder thereof being indebted to the bank, until such debt be satisfied; except the president and directors shall otherwise order it." Act May 16, 1812, c. 87, 2 Stat. 739.

The court said:

"The construction of the twenty-first section will depend upon the interpretation to be given to the word 'holder,' as there used. This term is not, necessarily, restricted to the nominal holder. It will admit of a broader and more enlarged meaning; and may well be applied to the party really and beneficially interested in the stock. And there can be no good reason why it should not be so applied, when the bank is fully appraised of all circumstances in relation to the stock, and knows who is the real holder thereof. This provision was intended to put into the hands of the bank additional security for debts due from stockholders. But, when it is known that the person in whose name the stock stands has no interest in it, he will acquire no credit upon the strength of such stock; and that such was the understanding of the bank, in this case, is clearly shown by the evidence. * * To permit the bank, under such circumstances to avail itself of this stock to satisfy a debt contracted without any reference to it as security, and with full knowledge that Lynn held it in trust for complainants, would be repugnant to the most obvious principles of justice and equity. Suppose the trust had been expressly declared upon the transfer book of the bank, would there be the least color for sustaining the claim now set up? And yet Lynn would be the legal holder of the stock, in such case, as much as in the one now before the court. Full notice of a trust draws after it all the consequences of an express declaration of the trust, as to all persons chargeable with such notice."

In commenting upon the above-cited case, counsel for defendants say:

"It is clear that, had the words 'registered holder' been used in the statute, the court would have reached the opposite conclusion."

We cannot agree with counsel in this claim. Obviously the word "holder" in the above-quoted statute meant holder of record, or "registered holder," and the trust relation, if shown, would apply to one as well as to the other. There is no claim in the instant case that the defendants did not know that the stock in question belonged, at all times subsequent to 1892, to the Porter family, or estate, and they knew that Recor never claimed to own it, and he never obtained any

credit upon the strength of it. See, also, Prince Investment Co. v. St. Paul & S. C. Land Co., 68 Minn. 121, 70 N. W. 1079.

That a bank may waive its lien is beyond question. Cecil National Bank v. Watsontown Bank, 105 U. S. 217, 26 L. Ed. 1039, and cases cited in note. The last-cited case is also instructive upon the powers of a cashier.

That the one whose name appears on the stock book is presumed to be the real owner, unless some one else is clearly shown to be such, is undoubtedly the rule. It is equally clear that this is a rebuttable presumption. See cases cited in 5 Cyc. 442, note 3.

All persons, unaffected with notice to the contrary, are at liberty to act upon the faith of the title of stock being where it appears upon the corporation books to be. Fisher v. Essex Bank. 5 Gray (Mass.) 373.

Where the name of an individual appears on the stock book of a corporation as a stockholder, this is presumptive evidence that he is so. The burden of proof is thrown then upon the defendant to show the contrary. Hoagland v. Bell, 36 Barb. (N. Y.) 57.

Books of a corporation are prima facie as to who possesses the stock ownership. The object of the stock book in requiring transfer of stock to be recorded by the corporation is for the protection of the corporation, to enable it to know who are its members who are entitled to its dividends. And in the case of a dispute as to a right to vote the books of the corporation are prima facie evidence. If the real owner wishes to have his name, or the true state of facts, appear on the books, he has his remedy in equity to compel a transfer. Hoppin et. al. v. Buffum, 9 R. I. 513; 11 Am. Rep. 291. There is a line of cases holding that the record is deemed conclusive of ownership. An examination of the cases will show that they relate to stockholders' liability. See Plumb v. Bank of Enterprise, 48 Kan. 484, 29 Pac. 699. That was a proceeding to enforce the individual liability of several stockholders of the Kansas Harvester Company, a corporation organized under the laws of Kansas. It was there held that the general rule is that the books of the corporation furnish evidence as to what persons are entitled to the rights and privileges of stockholders, and as to whom the creditors may look for payment in the event of insolvency of the corporation.

"Creditors of a corporation are presumed to have relied upon the books; and, where a stockholder sells his stock, but permits his name to stand upon the books of the corporation as one of its stockholders, he is in no condition to claim exemption from individual liability. If he has attempted in good faith to have the transfer recorded, and, having done all in his power to that end fails, other conditions would arise; but where he negligently permits the stock to stand upon the books in his own name, and fails to do that which is necessary to trans-

fer the legal title of the stock in accordance with the statute, he is not released from individual liability by the mere assignment and delivery of the certificates."

In such case the liability of the trustee remains, although he may look to his cestui que trust for reimbursement. Richmond v. Irons, 121 U. S. 27, 7 Sup. Ct. 788, 30 L. Ed. 864: Hawkins v. Glenn, 131 U. S. 319, 9 Sup. Ct. 739, 33 L. Ed. 184.

The equities of the case are with the complainant.

The decree of the circuit court is affirmed, with costs to the complainant.

PAYMENT OF CHECK TO IMPERSONATOR ON MISSPELLED INDORSEMENT.

Townsend, Oldham & Company v. Continental State Bank of Gorman, Court of Civil Appeals of Texas. May 29, 1915. 178 S. W. Rep. 564.

One who had stolen bales of cotton sold them to the plaintiff under an assumed name, the plaintiff giving him a check on the defendant bank in payment. It was held that the bank was protected in paying the check, since it was paid to the person to whom the drawer delivered it, even though the holder's indorsement did not strictly correspond with the manner in which the name was spelled on the face of the check.

Appeal from Eastland County Court: E. A. Hill, Judge.

Action by Townsend, Oldham & Co. against the Continental State Bank of Gorman. From a judgment for defendant, plaintiff appeals. Affirmed.

BUCK, J. On November 12, 1913, an unknown man came into the store of Townsend, Oldham & Co. of Gorman, Tex., and presented a warehouse certificate for three bales of cotton, which cotton was purchased by Townsend, Oldham & Co., who gave their check on the Continental State Bank of Gorman in payment thereof in the sum of $199.10, payable to J. F. McClinton, or order. This check was presented to the said bank by the person to whom it was in fact given, and paid by said bank, the person presenting same indorsing thereon the name of J. F. Clinton. The bank charged said amount to account of Townsend, Oldham & Co., they having on deposit an amount in excess of the sum named in said check. It later developed that the cotton for which said warehouse certificate had been given had been stolen, two bales from A. C. Hill and the other from S. M. Fowler. The owners brought suit for possession thereof, and secured the same by writs of sequestration, but Townsend, Oldham & Co. replevied, and upon a suit between the latter as defendant and the owners as plaintiff, the plaintiff secured judgment in the justice court, and the defendant appealed

NOTE.—For other similar decisions see Banking Law Journal Digest and Supplement, § 200.

to the county court. Townsend, Oldham & Co. then, on March 17, 1914, filed suit in the justice court against the Continental State Bank, alleging that the check given to J. F. McClinton was paid without indorsement of the payee named therein, but upon a forged indorsement, and that said bank was negligent in paying the check without the proper indorsement, and prayed for recovery of the amount of said check. The bank expressly denied negligence, and denied that it paid the check without requiring the indorsement of the payee named therein, and denied that the drawer had suffered loss thereby, and further alleged that the drawer had received a value consideration for said check, and was, therefore, estopped from recovering from defendant, etc. Apparently to meet this last given answer and plea, plaintiff, during the trial of this case, and under the advice of its attorney, filed in the county clerk's office, and with the papers of the two cases filed by the owners of the cotton, checks covering the amounts due them.

While the two names under which the unknown and elusive purloiner of the three bales of cotton was masquerading are given and spelt indifferently in the statement of facts, the pleadings, and the briefs as "Clenton" and "Clinton," "McClenton" and "McClinton," we have considered that the variance as to the vowel was not intentional on the part of the pleader or the witness, but was merely a typographical or clerical error, and that the only differences in the names so used was as to the presence or lack of the prefix "Mc."

This case was submitted on special issues and in answer thereto the jury found:

(1) That the defendant paid the amount of the check to the same person to whom the check was given.

(2) That the bank was negligent in cashing the check to the person to whom the proceeds were paid.

(3) That the name of the payee in the check and the name indorsed on the back of the check were not the same.

(4) That plaintiff did not authorize the bank to pay the check to J. F. Clinton.

(5) That plaintiff had deposited the value of the cotton with the county clerk for Hill and Fowler.

(6) That the name J. F. Clinton indorsed on the check was a fictitious name.

(7) That the person who indorsed the check was the same person to whom it was given.

(8) That the plaintiff, Townsend, Oldham & Co., sold the cotton for which the check was given, and received the proceeds of sale.

(9) That plaintiff had not been compelled to part with the proceeds of the sale of cotton.

(10) That the man to whom the check was given and the man who indorsed the check were one and the same person.

(11) That plaintiff had not paid to Fowler and Hill the value of said cotton in money.

Upon these answers of the jury, the court entered judgment for the defendant bank, and the plaintiff appeals.

No attack is made by appellant upon the verdict, but the contention is made that the same does not sustain the judgment rendered. It is urged that had not the bank been negligent in paying the check upon the indorsement of a name different from that of the payee in the check, the fraudulent character of the thief's possession of the cotton would have been discovered, and the fact that the holder of the check, who presented it to the bank, had no legal right thereto, would have been disclosed, and plaintiff would not have been caused to suffer, and that such negligence on the part of the bank was the proximate cause of plaintiff's loss. In a concrete form, the question presented in appellant's six assignments is, will a bank which pays a check to one to whom it was given, and who was intended by the drawer to be the payee, but who in fact indorsed said check in a name different from that given as payee be liable for such payment? We think the question must be answered, under the facts of this case, in the negative. While the evidence discloses that the bank did not require an identification of the holder of the check, yet it is further evident, from the finding of the jury, which finding is amply supported by the evidence, that such holder was in fact the payee intended by the drawer.

Daniels on Negotiable Instruments, says (volume 2, p. 1873):

"Cases have arisen in which checks have been paid on forged indorsements made by the person to whom the drawer delivered the check, mistaking his identity for the one who is designated as payee; and when the person to whom the check has been delived indorses it, and although it be a forgery of the name of the person whom the bank took him to be, it has been considered that the bank should be protected in paying the check, because the drawer was in fault in the first instance, and the person who forged the instrument was the person to whom the drawer actually delivered the instrument."

Hence, it is our opinion that appellant's assignment should be overruled, and the judgment of the trial court affimed, and is so ordered.

Affirmed.

THE LAW OF BANKING.

A COURSE OF STUDY IN THE LAW PERTAINING TO BANKS AND BANKING TRANSACTIONS.

BY JOHN EDSON BRADY OF THE NEW YORK BAR.

IV. PAYMENT OF CHECKS (Continued).

§ 151. Where Bank May Be Justified in Refusing Depositor's Check. (*Continued.*)

The prevailing rule is that a bank may refuse to pay its depositor's checks where a third party has notified the bank that he claims the deposit. In such a case, however, the bank must immediately notify the depositor of the adverse claim. A bank is entitled to apply a depositor's balance to the settlement of matured claims, which it holds against the depositor, and, if necessary, to refuse to pay the depositor's checks, thereafter presented.

§ 152. Measure of Damages for Refusing to Honor Check.

When a bank without legal cause refuses to honor a check drawn upon it, it is liable to the drawer for such damages as he sustains as a result of the refusal. If the drawer is a merchant or trader, it will be presumed, without further proof, that he has sustained substantial damages as a result of the dishonor of his check.

V. STOPPING PAYMENT OF CHECKS.

§ 153. Right of Drawer to Stop Payment.

The drawer of a check has a right to stop payment of it at any time before it is certified or paid by the bank, and, if the bank pays, after being instructed not to pay, it is liable to the drawer for the amount. When payment is stopped the payee or other holder has no rights against the bank, but must look to the drawer, and the liability of the drawer to the holder depends upon the circumstances involved.

§ 154. Right of Payee to Stop Payment.

If the payee of a check, after negotiating it, desires to stop payment, he should act through the drawer. The drawee bank, however, should not ignore a stop payment order received from the payee. It should communicate immediately with the drawer, if possible, it should insist that the payee give good reason for stopping payment, and, if it refuses the check should explain the cause to the holder, so that the refusal will not reflect upon the drawer's credit.

§ 155. How Payment May Be Stopped.

An order to stop payment on a check, to be binding upon the bank must be received before the check has been paid or certified by the bank and must conform to the rules prescribed by the bank, of which the depositor has notice. A bank may act upon a telegraphic order to stop payment, but it is not bound to. A stop payment order, which does not accurately describe the check, is ineffective.

§ 156. **Right of Bank to Recover Money Paid on Stopped Check.**
A bank which, in error, pays a check after it has been instructed by the drawer not to pay the check, is not only precluded from charging the amount against the depositor's account, but it is not permitted to recover the amount from the party to whom the payment was made where such party is a bona fide holder.

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§ 151. **Where Bank May Be Justified in Refusing Depositor's Check** —(Continued.) This section was partially covered in the last issue of the Journal. In the last issue we referred to the decisions, which hold that a bank is justified in refusing a depositor's check, where it is notified by a third party that he has a claim against the funds standing to the credit of the depositor.

A bank may, of course, always exercise its lien against a depositor's balance in favor of matured claims against the deposit. To illustrate, a bank which holds a depositor's past due note may hold out of funds, on deposit to his credit, a sum sufficient to pay the note, even if such action necessitates dishonoring checks drawn by the depositor. And, in the event that the depositor's checks are dishonored, as a result of such action on the part of the bank, the depositor is in no position to claim damages against the bank. Mt. Sterling National Bank v. Green, Ky., 35 S. W. Rep. 911. It is even held that, where a depositor becomes insolvent, and the bank holds his unmatured promissory notes, the bank has a right to apply his balance to the payment of the notes, and to refuse payment of the depositor's checks thereafter presented. Owens v. American National Bank, 36 Tex. Civ. App. 490, 81 S. W. Rep. 988. But a bank, which discounts for a customer the note of a third party, indorsed by the customer, and places the proceeds to the customer's credit, cannot, on the non-payment of the note at maturity, charge the note back to the customer, until after it has taken steps to charge the customer as indorser; if, without taking such steps, it charges the note to the customer's account and refuses to honor checks drawn by the customer which it would otherwise have paid, it is liable to him in damages. Davis v. Standard National Bank, 30 N. Y. App. Div. 210, 63 N. Y. Supp. 764.

§ 152. **Measure of Damages For Refusing To Honor Check.**—When a bank refuses to honor a check, drawn upon it by one of its depositors, the bank is liable to the depositor for such damages as naturally result from the dishonor of the check, where it appears that the check should have been paid and that the bank had no legal justification. In the preceding sections we have set forth the circumstances which justify a bank in refusing to pay a check drawn upon it and the circumstances which do not constitute a valid excuse for declining to honor a depositor's check.

The amount of damages, which the drawer of the check may recover from his bank, when the latter wrongfully refuses to pay his

check, varies with the circumstances involved and with the jurisdiction in which the question arises.

One point, which is usually inquired into in these cases, is the nature of the drawer's occupation. There are, it is true, many cases in which no reference is made to the business or profession of the drawer of the check. But, by the weight of authority, if the depositor is a merchant or trader, it will be presumed, without further proof, that he has sustained substantial damages as a result of the wrongful refusal to pay his check, and he will be permitted to recover such damages, without showing that he has suffered any actual damage. Levin v. Commercial Germania Trust & Savings Bank, La., 63 So. Rep. 601; J. M. James Co. v. Bank, 105 Tenn. 1.

V. STOPPING PAYMENT OF CHECKS.

§ 153 **Right Of Drawer To Stop Payment.**—A check is nothing more than an order, directed to a bank, to pay money from the drawer's account. As between the drawer of the check and the bank on which it is drawn, the check is subject to revocation by the drawer at any time before the bank has certified or paid it. If, after issuing a check the drawer decides to recall it, it is his privilege to notify the drawee bank not to honor it upon presentation and the bank is bound to carry out this instruction, provided, of course, that the notice is received by the bank before the check has been certified or paid. As a general rule, if the bank pays a check, after it has been notified by the drawer not to pay it, the bank assumes responsibility for the payment and will not be permitted to charge the amount against the depositor's account. In the case of German National Bank v. Farmers' Deposit National Bank, 118 Pa. St. 294, 12 Atl. Rep. 303, it was said: "I presume no one at this day questions the right of the drawer of a check to stop the payment thereof. This is usually done by notice to the bank upon which the check is drawn. If the bank pays after such notice it does so at its peril. The holder of a check has no remedy against a bank upon which a check is drawn for its refusal to pay it. He must look to the drawer. The right to stop payment ceases, of course, with actual payment."

As between the drawer of the check and the payee or other holder of the check, the drawer's right to stop payment depends upon the circumstances involved. When payment has been stopped the holder cannot proceed against the bank in an action on the check. He must look to the drawer and the drawer is liable according to whether or not he has a good defense to the check. The holder of the check, on which payment has been stopped, is in the same position as though the check had been dishonored for want of funds and notice of dishonor had been given to the drawer. If the check was obtained by fraud, or misrepresentation, or if no consideration was given for it,

these matters would constitute defenses as against the payee. But, if before presentment, the check had passed to the hands of a holder in due course, such defenses as those mentioned would be overcome and the holder in due course would be entitled to recover in an action against the drawer.

§ 154. **Right of Payee to Stop Payment:**—If the payee of a check, after having negotiated it, wishes for some reason to stop payment of the check, he should do so through the drawer. The bank is under a contractual obligation with the drawer to pay his checks upon presentment, when properly drawn, and is under a like obligation to respect his stop payment orders, but it is under no obligation whatever to the payee. The bank is, therefore, not bound to carry out the payee's instructions not to pay the check. The bank, however, should not totally ignore the payee's order to stop payment. What the bank should do in such circumstances is to communicate immediately with its depositor, the drawer of the check, and inform him of the payee's action; it should insist that the payee show good reason for wishing to stop payment and should require him to explain why he does not have the stop payment order sent in by the drawer. If the bank withholds payment on the payee's order it shoud explain the circumstances to the holder of the check, so that the refusal to pay will in no way reflect upon the credit of the drawer and it should be satisfied that, in carrying out the payee's order, it is not making itself liable in some way to the drawer. There are are but few decisions on this question and the matter is one in which the bank must be governed by rules of common sense rather than by rules of law. In some instances the bank might be perfectly justified in acting on the payee's instructions not to pay the check, while in others it would be incumbent on the bank to exercise great caution. The payee might, for instance, claim that the party to whom he transferred the check obtained it by misrepresentation of some kind. In such a case the bank would be in an awkward position for it might be without means of assuring itself of the correctness of the payee's claim. In such a case the bank might, for its own protection, insist that the payee secure it from possible loses in refusing payment of the check. On the other hand the payee might be able to convince the bank that his indorsement on the check was a forgery. In a case of this kind the bank would clearly be justified in refusing payment of the check, even without first communicating with the drawer, for a payment on a forged indorsement would render the bank liable for the amount to its depositor.

It has been held that the payee of a check may stop payment in a case where the check has been transferred without the payee's indorsement and that, even though the notice is not binding, because not given by the proper party, it is sufficient to put the bank upon notice as to the equities against the check in the hands of the holder, and that

a bank should not honor a check under such circumstances, without making such investigation as ordinary prudence would dictate, Public Grain and Stock Exchange v. Kune, 20 Ill. App. 137.

§ 155. **How Payment May Be Stopped.** While the drawer of a check has the right to stop payment under proper circumstances, there are, of course, certain requirements which must be met by him in order that his instructions to stop payment of the check shall be effective and binding on the bank. In the first place the order to stop payment must be communicated to the bank before the check to which it refers has been paid. Brandt v. Public Bank, 139 N. Y. App. Div. 173, 123 N. Y. Supp. 207.

The certification of a check by the drawee bank also terminates the drawer's right to stop payment. Once the check has been certified, the drawer loses all over control it, and he no longer has power to stop payment. National Commercial Bank v. Miller, 77 Ala. 168.

In the case of Kellogg v. Citizens Bank, Mo., 162 N. W. Rep. 643, certain checks were delivered by the payee to the cashier of the bank on which they were drawn, at a place away from the bank, after banking hours, for the purpose of being credited to the payee's account. The drawer of the checks notified the cashier and assistant cashier, before the opening of the bank for business on the following day, not to pay the checks. It was held that the notice was given in sufficient time and was binding on the bank.

The bank may enact and enforce rules in reference to the form and method of stopping payment of checks. It is not unusual, for instance, for a bank to have a rule to the effect that stop orders must be in writing. In the absence of such a rule the notice may be given verbally or in writing. People's Savings Bank & Trust Company v. Lacey, 146 Ala. 688, 40 So. Rep. 346.

A bank may be placed in an awkward position when it receives a telegram directing it not to pay a certain check. Although the telegram is signed in the name of the drawer, the bank has no means of knowing positively that the telegram was, in fact, sent by the drawer. In an English case it has been held that, while the bank may act upon such a telegram, at least to the extent of postponing the honoring of the check until inquiry can be made, the bank is not bound as a matter of law to accept an unauthenticated telegram as sufficient authority for the serious step of refusing payment. Curtice v. London City and Midland Bank, 98 L. T. N. S. 190.

An order to stop payment, to be effective and binding upon the bank, to which it is given, must accurately describe the check to which it refers. This point was brought out in a recent New York decision where it appeared that the drawer notified the bank not to pay a check for the sum of $196.76, dated Decemher 21 and payable to the order of a designated firm. The bank subsequently paid a check for $196.75,

dated December 23, and payable to the order of bearer. In an action against the bank the drawer contended that the check paid by the bank was the one on which he stopped payment, but it was held that the notice to the bank to stop payment did not describe the check with sufficient accuracy to render the bank liable. Mitchell v. Security Bank, 147 N. Y. Supp. 470.

§ 156. **Right of Bank to Recover Money Paid on Stopped Check.**—When bank is notified by a depositor not to honor a certain check, drawn by the depositor, upon presentment, and the notice is given in proper form, the bank is bound, at its peril, to observe the instruction. If, through some mistake, or oversight, it pays the check, it pay's its own money and not the depositor's. It cannot charge the amount against the depositor's account and it will not be permitted to recover the money from the party, to whom the payment was made, where it appears that such party was a bona fide holder of the check. National Bank of New Jersey v. Berrall, 70 N. J. Law 757, 58 Atl. Rep. 189.

This holding is placed upon the ground that, as between the holder of the check and the drawee bank, the latter is bound to know the state of the depositor's account. Before paying the check it must assure itself that payment has not been countermanded by the drawer. If it pays the check to a bona fide holder, who has no notice of any infirmity in the check, it finally exercises its option to pay or not to pay and the transaction is closed for once and all between the parties to the payment. The decision above referred to was reported in full in volume XXI of the Banking Law Journal at page 536.

In the case of Northampton National Bank v. Smith, 169 Mass. 281, it was held that, where a bank pays a check, after payment thereof has been stopped by ihe drawer, the bank must tender the check to the payee before it can bring an action against the payee for the money thus paid. That is to say, the bank was not permitted to recover from the payee in this case and the refusal to allow a recovery was placed upon the ground that the bank did not show that it had tendered the check to the payee before commencing suit. The question whether the bank might have maintained its action, had it alleged and proved a tender of the check to the payee, was not passed upon by the court.

(To be Continued.)

Modern Banking and Trust Company Methods

BY

WILLIAM McCHESNEY MARTIN, A. B., LL. B.

CHAPTER XVI.

The Bank's Records (Continued).

SUPERVISION OF BANKS.

On account of the very important place that the banks occupy in the welfare of our country, in order to safeguard the interests of all industries, as well as of the banks themselves, it is necessary that the banks be properly supervised. History shows that only too often, either through lack of good management or through violation of the law, banks have suffered serious consequences, which have not only affected the banks themselves, but also the innocent public.

SUPERVISION OF STATE INSTITUTIONS.

For the purpose of supervising the banks and trust companies existing under charters issued by the States, most of the States have established Banking Departments, with an officer in charge called the Banking Commissioner. It is his duty to supervise the organization of new banks and trust companies under the laws of his State, and to see that all such institutions operate within the laws. For this purpose, he requires periodical reports of conditions from them, and examines them from time to time with his corps of examiners. Some of the States, however, have not as yet established separate banking departments, and this work is done by the Secretary of State or State Auditor.

As the laws, under which State banks and trust companies are organized and operated, are not the same in each State, it would be impractical to embody in this work the requirements of all the different States in regard to the supervision of such institutions. However, as supervision of all banking institutions must of necessity, follow in a general way the same principles, and as the methods in practically all the States, that have effective supervision, follow those of the United States Government, it will serve our purpose, if we consider supervision as applied to the national banking system.

SUPERVISION OF NATIONAL BANKS.

The national banks are organized and operated under Federal law, and are not supervised by the individual States, but by an officer of the United States Government, called the Comptroller of the Currency. This officer is appointed by the President of the United States, on the recommendation of the Secretary of the Treasury, by and with the advice and consent of the Senate. He performs his duties under the general directions of the Secretary of the Treasury. He is charged with

EVERY BLANK SPACE MUST BE FILLED IN. WHERE THERE ARE NO FIGURES TO GO IN A PARTICU

Reserve District No. .....
Enter Charter Number of Bank Here.

(USE THE BLANK LINES IF NECESSARY, BUT DO NO"

No. .....

REPORT of the condition of "The _____

Dr. At _____, in the State of _____

RESOURCES.	Insert word NONE if no amount is to be entered at right.	DOLLARS.	CTS.	
1. *a* Loans and discounts (except those shown on *b*)	$			
b Acceptances of other banks discounted				
Total loans (See schedule No. 1)				1
2. Overdrafts, secured, $; unsecured, $ (See schedule No. 10)				2
3. *a* U. S. bonds deposited to secure circulation (par value)	$			
b U. S. bonds pledged to secure U. S. deposits (par value)				
c U. S. bonds pledged to secure postal savings deposits (par value)				
d U. S. bonds loaned				
e U. S. bonds owned and unpledged				
f Premium on U. S. bonds				
Total U. S. bonds				3
4. Bonds, securities, etc.:				
a Bonds (other than U. S. bonds) pledged to secure U. S. deposits	$			
b Bonds (other than U. S. bonds) pledged to secure postal savings deposits				
c Bonds and securities pledged as collateral for State, or other deposits or bills payable (postal excluded)				
d Bonds loaned (other than U. S. bonds)				
e Securities, other than U. S. bonds (not including stocks) owned unpledged				
Total bonds, securities, etc. (See schedule No. 9)				4
5. Subscription to stock of Federal Reserve bank $	$			
a Less amount unpaid				
b All other stocks, including premium on same				5
6. *a* Value of banking house (if unencumbered)				
b Equity in bankinghouse (If there is any mortgage or other encumbrance on banking house, leave "6 a" blank and fill in "6 b.")				6
7. Furniture and fixtures				7
8. Real estate owned other than banking house (see schedule No. 11)				8
9. Net amount due from Federal Reserve bank				9
10. *a* Net amount due from approved reserve agents in New York, Chicago, and St. Louis (see schedule No. 20 and note 2).	$			
b Net amount due from approved reserve agents in other reserve cities (see schedule No. 20 and note 2)				10
11. Net amount due from banks and bankers (other than included in 9 or 10) (see note 2)				11
12. Exchanges for clearing house				12
13. Other checks on banks in the same city or town as reporting bank				13
14. *a* Outside checks and other cash items (see schedule No. 14)	$			
b Fractional currency, nickels, and cents				14
15. Notes of other National banks				15
16. Federal Reserve notes				16
17. Lawful Money Reserve in Bank. *a* Gold coin	$			
b Gold certificates				
c Gold certificates payable to order				
d Clearing-house certificates (Sec. 5192)				
e Silver dollars				
f Silver certificates				
g Fractional silver coin				
Total coin and certificates				17
18. Legal-tender notes				18
19. Redemption fund with U. S. Treasurer (not more than 5 per cent on circulation)	$			
Due from U. S. Treasurer				19
20. Customers' liability under Letters of Credit				20
21. Customers' liability account of "Acceptances"				21
22. Other assets, if any (attach schedule)				22
TOTAL (to avoid discrepancies the total should be footed)				

NOTE 1.—With U. S. bonds are NOT to be included District of Columbia nor any Territory or insular possession bonds.

Place for official seal to be affixed by officer before whom acknowledged. See Act February 26, 1881. Notary must not be an officer or director of the bank.

State of .....
County of .....
Sworn to and subscribed before me this .....
day of ....., *1915; and I hereby certify that I am not an officer or a director of this bank.*

2—6011

.....
Notary Public.

I, _____
(Cashier or President.)
on back of the report fully and correctly

NOTE.—This report must be sworn to by the President or Cashier (oaths made by other officer will not suffice), attested by not less than three Directors, and forwarded to the Comptroller of the Currency with the least possible delay, as it is desired to complete the summary of reports as soon as possible after a call has been issued.

LAR COLUMN, THE WORD "NONE" MUST BE WRITTEN. THIS REGULATION WILL BE ENFORCED.

ERASE OR CHANGE ANY OF THE PRINTED ITEMS.)

TREASURY DEPARTMENT.
OFFICE OF THE COMPTROLLER OF THE CURRENCY.
FORM 2130.—REPORT.—Ed. 25,000—P. C., June 1-15.

,"

, at the close of business on the _____ day of _____, 1915. Cr.

LIABILITIES.	Insert word NONE if no amount is to be entered at right.	DOLLARS.	CTS.	
1. Capital stock paid in	$			
Surplus fund				
Total capital and surplus				1
2. Undivided profits	$			
a Reserved for taxes				
b Reserved for _____ (Include all other items set aside for any purpose.)	$			
c Less current expenses, interest, and taxes paid				2
3. Circulating notes	$			
Less amount on hand and in Treasury for redemption or in transit				3
4. Net amount due to Federal Reserve bank				4
5. Net amount due to approved reserve agents in New York, Chicago, and St. Louis (see schedule No. 20 and note 2).	$			
a Net amount due to approved reserve agents in other cities (see schedule No. 20 and note 2)				5
6. Net amount due to banks and bankers (other than included in 4 or 5) (see note 2)				6
7. Dividends unpaid				7
8. Demand deposits:				
a Individual deposits subject to check	$			
b Certificates of deposit due in less than 30 days				
c Certified checks (see schedule)				
d Cashier's checks outstanding				
e United States deposits				
f Postal savings deposits				
g State, county, or other municipal deposits secured by item 4c of "Resources"				
h Deposits requiring notice, but less than 30 days				
Grand total of deposits, Items 4, 5, 6, 7, 8				8
9. Time deposits (payable after 30 days, or subject to 30 days or more notice):				
a Certificates of deposit	$			
b State, county, or other municipal deposits secured by item 4d of "Resources"				
c Other time deposits				9
10. U. S. bonds borrowed without furnishing collateral security for same	$			
a U. S. bonds borrowed for which collateral security is furnished				10
11. Other bonds borrowed without furnishing collateral security for same	$			
a Other bonds borrowed for which collateral security was furnished				11
12. Securities (other than U. S. or other bonds) borrowed without furnishing collateral security for same	$			
a Securities (other than U. S. or other bonds) borrowed for which collateral security was furnished				12
13. Rediscounts with Federal Reserve bank (see schedule No. 22)	$			
a Notes and bills rediscounted elsewhere than at Federal Reserve bank (see schedule No. 22)				13
14. Bills payable, including obligations representing money borrowed (see schedules Nos. 19 and 21)				14
15. State bank circulation outstanding				15
16. Letters of Credit				16
17. "Acceptances," based on imports and exports				17
18. Liabilities other than those above stated (attach schedule)				18
TOTAL (to avoid discrepancies the total should be footed)				

NOTE 2.—THE NET BALANCE only of amounts due to or due from EACH bank can be permitted.

_____, *of the above-named bank, do solemnly swear that the above statement is true, and that the SCHEDULES represent the true state of the several matters therein contained, to the best of my knowledge and belief.*

Correct.—Attest:

_____
Cashier.

To be attested by not less than three Directors other than the officer verifying the report.

_____
_____
_____
Directors.

the execution of all laws passed by Congress relating to the issue and regulation of national currency secured by United States bonds, and, under the general supervision of the Federal Reserve Board, of all Federal Reserve Notes. The national banks of the country number about 7,629, and it is his duty to see that they observe the Federal laws, under which they are organized. He also superintends the organization of new national banks, and takes charge of them when they voluntarily liquidate or fail, for the benefit of depositors, stockholders, and other creditors. If a bank is insolvent, he has the power to close it, and in this way can protect the country from weak and dangerous banks.

In order that the Comptroller may be advised as to the financial condition of the national banks, and in order that he may determine whether they are operating within the law, the law requires that, in addition to being examined by duly appointed examiners at least twice each year, each national bank must make to the Comptroller not less than five reports, during each year, of its resources and liabilities. Such reports must show the bank's condition at the close of business on any past day specified by him, and the bank must use the form of report which he prescribes. These reports are required to be transmitted to the Comptroller within five days after receipt of request from him, and a penalty of $100 is attached by law for each day's delay beyond this period of five days. Not only are such reports required to be sent to the Comptroller, but a prescribed synopsis of them must be published in a newspaper in the place where the bank is located, or, if there is no newspaper there, in one published nearest thereto in the same county, and a proof of the publication thereof sent to the Comptroller. The Comptroller of the Currency is also empowered to call for special reports from any bank when, in his judgment, it is necessary to ascertain a full and complete knowledge of its condition.

A revised form of report of condition, prescribed by the Comptroller and sent by him to all the national banks under date of August 31, 1915, is shown on pages 710 and 711.

As this form of report may be adapted for use by any kind of bank or trust company, we will use it in considering the different items which are usually required of financial institutions in furnishing reports of their condition. The following numbers refer to the numbers of the items appearing in the illustration.

RESOURCES.

"1. Loans and discounts." This item should show the amount of all the different kinds of paper representing money loaned by the bank. The amount af all such paper should be given out under "a," except acceptances of other banks discounted, which should be given separately under "b."

"2. Overdrafts." This item should show the amount of overdrafts that are secured, the amount unsecured, and the total of all overdrafts.

As overdrafts are in the nature of loans to the depositors, they must be included in the resources of the bank.

"3. United States bonds." Under item "a" should be given the par value of all United States bonds deposited to secure circulation. Prior to the passage of the Fedeaal Reserve Act, national banks were required to deposit with the Treasurer of the United States a stated amount of United States bonds and take out circulation thereon, before commencing business. This requirement was repealed by Section 17 of the Federal Reserve Act, but any national bank, if it so desires, may still deposit bonds with the Treasurer of the United States and receive circulating notes to the par value thereof, in an amount not exceeding its capital stock actually paid in. Under Section 18 of the Federal Reserve Act, after two years from the passage of the Act and at any time within twenty years thereafter, a national bank, if it so desires, may retire its circulating notes and sell its bonds held as security, by making application to the Treasurer of the United States.

Under the item "b" should be shown the amount of United States bonds pledged to secure United States deposits. The law authorizes the Secretary of the Treasury to designate national banks as depositaries of public money and financial agents of the Government, upon their furnishing him satisfactory security, by the deposit of United States bonds and otherwise. This is done so as to derive interest on such funds and also as a matter of convenience to the Government in the receipt and disbursement of its internal revenue and customs, or to distribute the deposits with a view to serving business interests. Under the Federal Reserve Act, only Federal Reserve Banks and members of the Federal Reserve System, which include all national banks, are allowed to be depositaries of public funds.

Item "c" should show the amount of United States bonds pledged by the bank to secure postal savings deposits. The law provides that the funds received by the Postal Savings Banks shall be deposited in solvent banks, upon the banks paying not less than 2-1/4% interest thereon and furnishing satisfactory security in public bonds, or other securities, to the Board of Trustees, of which the Treasurer of the United States is treasurer.

The item "d" should show the amount of the United States bonds loaned out, and item "e" should show the amount of such bonds owned by the bank and unpledged.

Under item "f" should be given the amount of premium on United States bonds.

"4. Bonds, securities, etc." Under this heading should be given securities of all kinds (except stocks and United States bonds) owned by the bank, such as bonds, chattel mortgages, judgments, claims, warrants, etc. Under the law, certain classes of such securities may be pledged to secure public funds on deposit with the bank. The amounts of bonds, etc., so pledged, as well as the amount loaned and

the amount owned and unpledged, should be given under the respective items.

"5. Subscription to stock of Federal Reserve Bank." Under this heading should appear the total amount of the bank's subscription to stock of the Federal Reserve Bank of its District, and under the item "a" should be given the amount of the subscription which is unpaid. The Federal Reserve Act provides that a bank or trust company, becoming a member of the Federal Reserve System, must subscribe for stock in the Federal Reserve Bank of its District in a sum equal to six percent of the aggregate amount of its unimpaired and paid up capital stock and surplus. The Act required those banks, which originally entered the System, to pay one-sixth of their subscriptions on call of the Federal Reserve Board, another one-sixth within three months thereafter, and another one-sixth within six months thereafter. The original members made the first payment on their capital stock subscriptions, under call of the Federal Reserve Board, on November 2, 1914, the second payment on February 2, 1915, and the third payment on May 2, 1915. With the payment of May 2, 1915, their subscriptions became one-half paid. The remaining unpaid portion of their subscriptions will be paid as and when called by the Federal Reserve Board. Banks, which become members after the inauguration of the System, are required to pay for their stock subscriptions, at the time they are allotted shares, to the same extent that the original members have paid their subscriptions. When a member bank increases its capital or surplus, it is required to apply for additional stock in the Federal Reserve Bank equal to 6% of said increase. When a member bank reduces its capital, it is required to surrender an amount of the stock which it holds in the Federal Reserve Bank, equal to 6% of said decrease. In case it reduces its surplus, if the reduction is to be only temporary, it may, with the approval of the Federal Reserve Board, retain the full amount of stock which it holds in the Federal Reserve Bank. In either case, whenever a member bank increases or decreases its capital or surplus, it should promptly notify the Federal Reserve Bank of its District.

Under item "b" should be given the amount of all other stocks owned by the bank, including the premium on same. The courts have held that a national bank has no power to deal in stocks, or buy or sell them upon commission. Such operations are said not to be incidental to the business of banking as defined by the statute. Yet, they may accept stock when it is transferred to them, bona fide, in satisfaction of debts, and when it is taken with a view to avoid an anticipated loss. Such stock, however, should be converted into money as soon as possible.

"6. Banking house." Under this heading should be entered the book value, which should be the market value as nearly as possible, of only the real estate held by the bank such as is "necessary for the

immediate accommodation in the transaction of its business," as provided by Section 5137 of the Revised Statutes. If there is any mortgage or other encumbrance on the banking house, item "a", showing the value of the banking house, should be left blank, and only item "b" filled in, showing the equity in the banking house.

"7. Furniture and fixtures." The actual value to the bank of all the furniture and fixtures, used in transacting its business, should be entered under this item.

"8. Real estate owned other than banking house." Under this heading should be given the book value of all real estate owned by the bank, except the banking house property. Section 5137 of the Revised Statutes provides that a national bank may purchase, hold, and convey, in addition to its banking house, only such real estate as shall be mortgaged to it in good faith by way of security for debts previously contracted; such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, and such as it shall purchase at sales under judgments, decrees, or mortgages held by the bank, or shall purchase to secure debts due to it, but the bank shall not hold such real estate for a longer period than five years. The purpose for these restrictions is evidently to prevent banks from investing their resources in real estate, which may not be readily convertible into cash.

"9. Net amount due from Federal Reserve Bank." This net amount is obtained by taking the total of all amounts due to the member bank from the Federal Reserve Bank, such as the amount of reserve it is required under Section 19 of the Federal Reserve Act to keep on deposit with the Federal Reserve Bank, any amount it may have on deposit there in excess of its required reserve, and items sent to the Federal Reserve Bank for collection, and deducting therefrom any amount that may be due by the member bank to the Federal Reserve Bank.

"10. Net amount due from approved reserve agents." Item "a" should show the net amount due from approved reserve agents in the central reserve cities, and item "b" should give the net amount due from such agents in reserve cities. Under the law, a bank, not located in a reserve city, may select any national banks in any of the reserve cities or central reserve cities as depositaries for its funds, and such funds, upon approval of the Comptroller, are allowed to be counted as part of the required reserve of the depositing bank. The banks in the reserve cities may likewise select banks in central reserve cities for approved reserve agents. These central reserve and reserve cities are designated by the Comptroller of the Currency, upon request of a certain percentage of the national banks located therein. The central reserve cities consist of New York, Chicago and St. Louis, and the reserve cities now number fifty-three.

"11. Net amount due from banks and bankers." This item

should show the net amount due from all other banks and bankers, except the Federal Reserve Bank and approved reserve agents. This amount is ascertained by taking all amounts that the reporting bank has on deposit with such other banks and bankers, including cash items sent them for collection, and deducting therefrom the amounts due by it to them.

"12. Exchanges for clearing house." This item represents checks or drafts on banks that are members of a clearing house, and were held over until clearing time next day as a part of the cash. They will occur only in the case of a bank located in a place where there is a clearing house.

"13. Other checks on banks in the same city or town as reporting bank." Where no clearing house exists, checks held by the bank on other banks in the same town are included under this heading. It might also occur where there is a clearing house, such as items drawn on banks that do not clear through the local clearing house.

"14. Outside checks and other cash items." Under this heading should be given the amount of all unpaid outside checks and drafts which, for any reason, must be held over until the next business day. It should also include Internal Revenue Stamps, and any other items received as cash and which are readily convertable into cash.

The item "b" should show all fractional currency, nickels, and cents held by the bank. Fractional currency is no longer issued by banks, but it was widly circulated a number of years ago, and there is still some of it to be found.

"15. Notes of other National banks." Under this heading should be entered the amount of circulating notes on hand issued by other National banks, and these only. The bank should not include in this item any notes of its own issue which it may have on hand, but they should be treated as explained in item "3" under liabilities.

"16. Federal reserve notes." This item should show the total amount of all circulating notes on hand issued by the Federal Reserve banks under the provisions of the Federal Reserve Act.

"17. Lawful money reserve in bank." Section 19 of the Federal Reserve Act requires national banks in Central reserve cities to maintain reserves of 18% on demand deposits and 5% on time deposits; in reserve cities. 15% on demand deposits and 5% on time deposits, and in non-reserve cities, 12 % on demand deposits and 5% on time deposits. The amount of gold coin, gold certificates, gold certificates payable to order, clearing-house certificates. silver dollars, silver certificates, and fractional silver coin, comprising this reserve, should be shown separately under the respective headings. Item "b" (Gold certificates) should show certificates of deposit issued for gold deposited with U.S. treasurer, the lowest denomination of which is $10. Item "c" (Gold certificates payable to order) refers only to certificates issued for gold deposited, payable to the order of the bank making the deposit, the minimum amount being $10,000, as authorized under the Act of March 14, 1900.

It should also include any certificates payable to order issued before the law was amended, which permitted such certificates in the sum of $5,000 each. The item "d" (Clearing-house certificates) should show the amount of all certificates held by the bank for deposits made with the clearing house of which it is a member, under the provisions of Section 5192 of the Revised Statutes. Only members of a clearing house can have such certificates to report.

"18. Legal-tender notes." Under this item should be entered only Treasury and United States notes. "National bank" notes Federal Reserve Notes and coin certificates should not be included under this heading.

"19. Redemption Fund." Under the law, before a national bank may issue currency, it is required to deposit with the United States Treasurer a sum equal to 5% of the currency applied for, as a redemption fund. The notes issued by the bank are eventually presented to the United States Treasurer for payment, and as they are redeemed, are charged to this account. The bank is then notified, and it immediately makes a deposit to restore this fund. Under this heading no amount greater than 5% of the bank's circulation outstanding should be entered. If a larger amount is on deposit with the United States Treasurer, the excess over 5% should be reported under the item, "Due from United States Treasurer." This item should also include notes of other banks or other forms of currency sent to the United States Treasurer for redemption.

"20. Customers' liability under Letters of Credit." This item should give the total liability of customers to the bank, arising out of letter of credit transactions. Letters of credit are issued by banks to their customers who are going to travel at home or abroad, and for commercial purposes. The bank usually requires the customer to deposit with it an amount of money sufficient to cover the letter of credit, or to furnish it collateral security therefor.

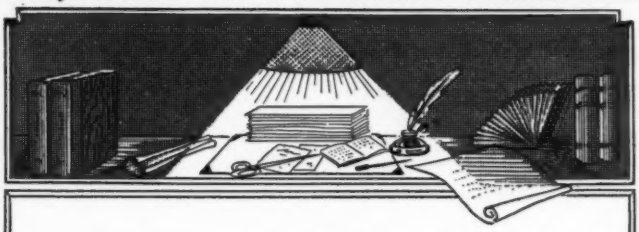
"21. Customers' liability account of "Acceptances." This item should show the total liability of customers arising out of transactions in acceptances.

Section 13 of the Federal Reserve Act authorizes banks, which are members of the Federal Reserve System, to deal in acceptances,—that is to accept drafts or bills of exchange drawn upon them and growing out of transactions involving the importation or exportation of goods, having not more than six months sight to run. A bank may aggree with its customer to accept drafts drawn on him by parties from whom he may make purchases. As soon as such a draft is accepted, it becomes a liability of the bank, as is shown by item 17 on the liability side of the report, and the bank's corresponding claim against the customer for the amount of the draft, so accepted, becomes the customer's liability to the bank, which is a resource of the banks being in the nature of a loan.

"22. Other assets." In case the bank has any other assets, which cannot be listed under any of the forgoing headings, they should be enumerated under this item.

(To be Continued.)

INQUIRIES AND CORRESPONDENCE



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CONDUCTED BY JOHN EDSON BRADY OF THE NEW YORK BAR.

CAUTION.

In submitting a question it is essential that all of the facts involved be clearly set forh. If the question relates to a check, bill of exchange, note, or other negotiable instrument, or to any paper or document, a copy should be sent, also copies of letters having reference to the transaction out of which the question arises.

LIABILITY OF PERSON WHO INDORSES NOTE IN BLANK BEFORE DELIVERY TO PAYEE—QUESTION WHETHER HE IS ENTITLED TO NOTICE OF DISHONOR.

Editor Banking Law Journal. ILLINOIS, September 7, 1915.

DEAR SIR:—We have been a subscriber to your journal for a number of years and are much interested in the decisions which are printed therein from time to time.

We would be pleased to have you submit the following hypothetical question to your legal department:

A., a corporation, executed its note for $1000.00, payable to B. on demand, which C., one of the officers of A , indorsed in blank on the back thereof, before delivery. The proceeds of the note were procured for and used by A., C. receiving no other benefit thereof than as one of the share holders of A. The note contained no provision waiving presentment for payment, protest, notice of non-payment, etc. The note was executed, indorsed and payable in the state of Illinois. Payment of the note was demanded about ninety days after date, but not paid. Indorser was not notified of its non-payment, for several weeks after payment demanded.

Is C. now liable for the payment of said note, under the provisions of the uniform Negotiable Instrument Law?

The history of the transaction is that the corporation bought some bonds of the holder and gave notes for a part of the cost thereof. These notes were not paid, and after payment of the balance had been insisted upon, the note in question was sent to the holder to take the place of the original note. The original note waived notice, protest, etc.

The failure to give notice was not due to any error on the part of holder or notary. The maker was probably insolvent at the time of the maturity of the note

but I cannot say at the time of endorsement. The corporation was then, and is now, doing business but has assets known to be available upon execution. The endorser knew all about it doubtless, as he was Treasurer of the corporation. The endorser did nothing to induce holder not to give notice, nor did he request the holder to postpone presentment for payment. There were no conversations between holder and endorser until some time after payment of the note had been demanded and refused. Then oral demand was made of the endorser who refused payment and claimed he was not liable because holder had allowed collateral to be dissipated. (This was not true). The endorser made no other agreement than that contained in his endorsement.

At the request of our attorney your attention is called to the following cases:

Night and Day Bank vs. Rosenbaum 177, S. W. 693.
Rouse vs. Wooton 53, S. E. 430. Surety not entitled to notice.
Vanderford vs. Bank, 66, Atl. 47.
Mersick vs. Alderman, 60, Atl. 109.
Richards vs. Bank, 90, N. E. 1000.
Northern State Bank vs. Belamy, 125 N. W. 888.
Union Trust Company vs. McGinty, 98, N. E. 679.
First State Bank vs. Williams, 175, S.W. 10.
Fritts vs. Kirchdorfer, 124, S. W. 882.
Wilbour vs. Hawkins, 94 Atl. 856.
White vs. Savage, 87, Pac. 1040.
Also Sections 29-70-118 & 191 of Illinois Negotiable Instruments Law.

Yours truly, CASHIER.

Answer:—The case presented is this: a note, prior to its delivery by the maker to the payee, is indorsed in blank by a third person, who receives no consideration for his indorsement, but indorses for the purpose of lending his credit to the maker. The note, which is payable on demand, is subsequently presented for payment, but payment is refused and the holder neglects to serve notice of dishonor upon the indorser. We are ignoring for the moment the fact that the indorser is a stockholder in the corporation, which appears as maker on the note, and will take up that phase of the matter later.

The question is whether the indorser is discharged by the failure to give notice of dishonor; is his liability that of indorser merely, so that he is released by a failure to take the steps ordinarily required to charge persons secondarily liable on negotiable instruments, that is drawers and indorsers, or is his liability that of a maker, guarantor or surety, who is liable though the instrument is not presented for payment and notice of dishonor is not given?

Examination of the authorities shows that one who indorses a note in manner described above, is liable only as an indorser and is discharged from liability by a failure to present for payment and give notice of dishonor. This rule has been followed in a number of recent decisions and is uniformly declared to be the rule laid down by the provisions of the Negotiable Instruments Law, which statute has been adopted in Illinois, as well as in most of the other states.

RULE PRIOR TO THE ADOPTION OF THE NEGOTIABLE INSTRUMENTS LAW

Prior to the adoption of the Negotiable Instruments Law the courts of this country were at great variance with each other as to the liability of a party who indorsed a negotiable instrument in blank before its

delivery to the payee. In some jurisdictions he was held to be merely an indorser, while in others his liability was held to be that of a co-maker. The courts of some of the states held that he was liable as surety for the maker and in others the view was maintained that one who indorsed a negotiable instrument in this manner assumed the liability of a guarantor. The indorser's liability, therefore, depended upon the jurisdiction in which the question arose. If he was deemed to have contracted a mere indorsement liability he could not be held without presentment for payment and notice of dishonor. But if he was a maker, surety or guarantor the formalities of presentment and notice were not necessary. The release of the indorser by an extension of time granted to the maker was also regulated by the character of the liability which the indorser was deemed to have assumed. In some states the liability, whether that of maker, guarantor, surety or indorser, was presumptive and extrinsic evidence was admissible to show that some other form of liability was intended by the parties. In other states the contract could not be varied by extrinsic proof. It is neither necessary nor helpful to consider the cases which were decided prior to the enactment of the Negotiable Instruments Law. The primary object of that statute was to make uniform throughout the United States the law applicable to commercial papers. Prior to the adoption of the statute it is difficult to conceive of a condition of greater chaos than existed among the decisions in respect to the rights and liabilities of the different parties to a note, which was indorsed in blank before delivery to the payee. This confusing situation has been entirely overcome by the statute, as will be pointed out.

PROVISIONS OF THE NEGOTIABLE INSTRUMENTS LAW APPLICABLE TO PAPER INDORSED IN BLANK BEFORE DELIVERY.

Sections 63 and 64 of the Illinois Negotiable Instruments Law regulate the rights and liabilities of parties, who indorse commercial paper in blank before delivery. They read as follows:

Sec. 63. A person, placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Sec. 64. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules.

1. If the instrument is a note or bill payable to the order of a third person, or an accepted bill, payable to the order of the drawer, he is liable to the payee and to all subsequent parties.

2. If the instrument is a note or unaccepted bill payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee.

The wording of section 64, as enacted in Illinois, differs from that

of the corresponding section of the statute in other states but, for the purposes of the present discussion, this variation is immaterial.

DECISIONS CONSTRUING THE NEGOTIABLE INSTRUMENTS LAW WITH REFERENCE TO LIABILITY ON PAPER INDORSED BEFORE DELIVERY.

In at least ten of the states the courts have been called upon to determine the liability of one who indorses a note prior to its delivery to the payee, under the provisions of the uniform statute. And in each instance it has been held that the liability is that of indorser merely and that the indorser is dischared unless the note is duly presented for payment and notice of its dishonor is given.

Rockfield v. First National Bank, 77 Ohio St. 311, 83 N. E. Rep. 392, was decided in 1907, under the provisions of the Negotiable Instruments Law. The note sued on in that instance reads as follows:

$10,000. Springfield, Ohio, Dec. 12, 1904.

On demand after date we jointly and severally promise to pay the First National Bank of Springfield, Ohio, or order, at its banking house, ten thousand dollars, for value received, with six percent. interest after date.

The Springfield, C. W. & C. Ry. Co.,
E. L. Rockfield, Pres.
E. H. Ackerson. Secy.

The note was indorsed in blank on the back in the following manner: "John Snyder, Frank Paterson, L. M. Goode, E. H. Ackerson." It appeared that these parties placed their names on the note prior to its delivery to the payee and that they did so for the accommodation of the maker.

In this case it was held that, while prior to the adoption of the statute in Ohio, the parties who placed their names on the back of the note in the manner described would have been liable as sureties, and therefore not entitled to demand and notice, unless a different understanding between them could be shown, the rule was changed by the statute. Under sections 63 and 64, quoted above, and other sections of the statute referred to by the court, they were liable as indorsers only and were discharged by a failure to make demand and give notice.

In the opinion the court said: "A person who, being a stranger to a promissory note, places his name on the back by blank indorsement, is an indorser of the paper and cannot be held in any other capacity. As such he is entitled, in order to render him liable, to notice of demand upon those who are primarily liable, and, failing such demand and due notice to him, he is discharged."

Before the statute went into effect in New York it was well settled in that state that a person, who puts his name on the back of the note before its delivery to the payee, was presumably a second indorser and not liable to the payee. This presumption, however, could be rebutted by parol evidence showing that the intention of the indorser was to become a surety for the maker, in which case he would be liable in

that capacity to the payee. Under the provisions of the statute it is now held in New York that such an indorser is liable as indorser only, and is liable to the payee, as well as to subsequent parties. Haddock, Blanchard & Co. v. Haddock, 192 N. Y. 499, 85 N. E. Rep. 692.

The rule in Missouri, prior to the adoption of the statute, was to the effect that one who signed his name in blank on the back of a note, before its delivery to the payee, was liable as a co-maker. In the case of Phoenix National Bank v. Hanlon, Mo., 166 S. W. Rep. 831, it was held that this rule ceased to exist with the enactment of the Negotiable Instruments Law and that, under its provisions, one who signs on the back of a note before delivery is liable as an indorser, where there is nothing to indicate his intention to be bound in some other capacity. In Walker v. Dunham, 135 Mo. App. 396, decided in 1908 under the provisions of the statute, it appeared that the defendants placed their signatures on the back of the promissory note for accommodation before its delivery to the payee. It was held that they were liable as indorsers only and that, as such, they were discharged by a failure to present and give notice of dishonor.

In McDonald v. Luckenbach, 170 Fed. Rep. 434, a decision of the United States Circuit Court of Appeals, construing the Negotiable Instruments Law of Pennsylvania, the note sued on was made by A, payable to B, and indorsed by C prior to its delivery to the payee. It was held that the indorser was discharged by a failure to make demand and give notice of dishonor.

The same situation was presented in the New Jersey decision, Gibbs v. Guaraglia, 75 N. J. Law 168, 67 Atl. Rep. 81. Is was held that, while prior to the adoption of the statute, such an indorser was primarily liable on the note and therefore not entitled to demand and notice, the rule was changed by the statute, which makes such a party liable as indorser only and gives him the right to demand and notice.

Other decisions, in which the sections of the Negotiable Instruments Law, quoted above, have been construed and in which it has been held that one who indorses a note in blank before its delivery to the payee is liable as indorser only, and in no other capacity, and that he is discharged from liability if the instrument is not duly presented for payment and proper notice of dishonor is not served upon him are the following: J. H. Perry & Co. v. Taylor Brothers, 148 N. C. 363, 62 S. E. Rep. 423; Lewy v. Wilkinson, La., 64 So. Rep. 1003; Deahy v. Choquet, 28 R. I. 338, 67 Atl. Rep. 421; Farquahr v. Higham, 16 N. D. 106; Baumeister v. Kuntz, Fla., 42 So. Rep. 886; Third National Bank v. Bickel, Ky., 137 S. W. Rep. 790.

In California, which state has not adopted the Negotiable Instruments Law, it has been held, under sections 3108 and 3117 of the California Civil Code, which provisions are somewhat similar to those of the Negotiable Instruments Law, quoted above, that one who in-

dorses a note in blank before delivery is liable as an indorser only and is discharged if he is not given due notice of dishonor. Navajo County Bank v. Dolson, 163 Cal. 485, 126 Pac. Rep. 153.

The statute has not been enacted in Mississippi and it is there held that the indorser in blank before delivery is liable as a maker and is not entitled to notice of dishonor. Lindsay v. Parrott, Miss., 66 So. Rep. 412. The same holding is adhered to in Maine, which state has also neglected to adopt the Negotiable Instruments Law. First National Bank v. Blake, Me., 93 Atl. Rep. 840.

THE ILLINOIS DECISIONS.

The courts of Illinois do not appear to have been called upon to construe the provisions of the Negotiable Instruments Law in question, with reference to the liability of a party who indorsers a note in blank before delivery. The statute was approved in Illinois on June 5, 1907. In the case of Bates v. Worthington, 163 Illinois App. 75, decided in 1911, the note sued on was payable February 1, 1908. It does not appear when the note was made and delivered and no reference to the statute is made in the opinion. It is, therefore, impossible to state whether the provisions of the statute applied in this case or not, since the act declares that it shall not apply to instruments made and delivered prior to its becoming a law. From the fact that the court makes no reference to the statute it may be inferred that the decision in no way involves an application of its provisions and that the case merely expresses the law, as it existed prior to the enactment of the statute. The law is stated in the following syllabus, which accompanies the decision: "A person, who is not a party to a promissory note, which is to become a valid obligation against the maker upon its delivery to the payee, by writing his name on the back of the note, is presumed to assent to the obligation of a guarantor. He is not entitled to notice of protest and dishonor and is not discharged by reason of insufficient presentment for payment, protest and notice of dishonor."

A later Illinois decision, which also makes no reference to the statute, and, therefore, presumably deals with a note which was delivered before the statute took effect, is Chattanooga Savings Bank v. Lumby, 185 Ill. App. 111. No opinion was written by the court in this instance, but the syllabus is as follows: "Where a note, given to an individual, is made payable on its face to the order of a bank, and and such person writes his name on the back of the note and sells it to the bank, by indorsing the note, the transaction comes within the rule that, where a person not the payee of a note, places his name on the back thereof the legal presumption is that his liability is that of a guarantor. A guarantor of a note is an original promisor and not one secondarily liable; the only way he can be relieved from liability thereon is by the payment of the note."

But, in Illinois, it was held that the presumption that the indorser was liable as a guarantor might be rebutted by parol evidence, while

the note was still in the payee's hands, showing that a liability of a different character was intended. Milligan v. Holbrook, 168 Ill. 343, 48 N. E. Rep. 157. In this case the payee of a note said to a third person, who was about to indorse it before delivery by the maker to the payee. "You indorse this note, do you?" The third person replied: "I indorse the note because I consider the maker good, and you have got to exhaust him before you can collect of me." It was held that this conversation tended to prove that the liability assumed was that of indorser only and not of guarantor.

It has already been pointed out that, in each state in which the question here involved has come up under the provisions of the Negotiable Instruments Law, the court has decided that, whatever may have been the rule prior to the adoption of the statute, the rule as declared by the statute is to the effect that the indorser of a note before delivery to the payee is liable as an indorser only and in no other capacity, and that the note must be presented and notice of dishonor given in order to charge the indorser with liability. This conclusion has been reached in the following states: Florida, Kentucky, Louisiana, Missouri, New Jersey, New York, North Carolina, North Dakota, Ohio and Rhode Island. In no instance has a different conclusion been reached. While the question does not appear to have been decided by the courts of Illinois, under the provisions of the statute, it is difficult to see how the courts of that state could do otherwise than follow the plain wording of the statute and the decisions referred to above.

STOCKHOLDER OR OFFICER, INDORSING NOTE MADE BY CORPORATION IS NOT AN ACCOMMODATED PARTY, SO AS TO EXCUSE THE GIVING OF NOTICE.

The Negotiable Instruments Law, Section 114 of the Illinois Act, provides that notice of dishonor need not be given to an indorser, "when the instrument was made or accepted for his accommodation." Occasionally the claim has been made that, where a stockholder or officer of a corporation indorses a note made by the corporation, prior to its delivery, the indorser is one of the parties in interest and, in reality, the accommodated party and that he is not entitled to notice of dishonor under the section just quoted. This contention, however has been denied by the courts. In McDonald v. Luckenbach, 170 Fed. Rep. 434, the note in question was made by a corporation, payable to a person, who was a stockholder and officer of the company, for money advanced to the company. It was indorsed by the payee and by two other officers and stockholders of the company. In holding that these parties were liable as indorsers merely and, as such, entitled to notice of dishonor, the court said: "All the evidence is consistent with this statement of the transaction, and no other interpretation, it seems to us, can be given to it, unless, indeed, directors and officers of a corporation interested in its successful operation cannot, in negotiating

a loan for the benefit of the corporation, insure its credit by assuming only the liability of indorsers of its negotiable paper. Such a proposition, of course, can be sustained neither by reason nor authority. In the present case all the evidence tends to show that the payee of the note had no other thought than that the security he held for his note was what it purported to be on its face, i. e., the primary liability of the corporation, as maker, and the secondary liability of the defendant and his two colleagues, as indorsers. No apparent eagerness or zeal on the part of these indorsers and the payee, to raise this money for the purpose of the corporation, can obscure or contradict the evident intention that the form of the contract and the liability of the parties thereto, given and taken in security for the loan, should not be other than as indicated on the face of the instrument itself. In no other sense than as active and zealous business managers can they be called, as the learned judge of the court below calls them, the real parties in the transaction, and we cannot agree with him that the evidence shows that the loan was made directly to these three directors, for their own purposes or otherwise. In transactions of this kind the corporate entity is as distinct from its officers and directors as it is from third persons with whom it transacts business, and stockholders or directors who lend their individual credit to the corporation of which they are members, are entitled to the same rights and immunities which attach to the status of indorser or surety, where third parties have assumed those liabilities."

In First National Bank v. Bickel, Ky., 137 S. W. Rep. 790, it was held that the section of the Negotiable Instruments Law, which provides that notice of dishonor need not be given to an indorser, where the instrument was made for his accommodation, does not apply in favor of a stockholder, who indorses a note made by his corporation, prior to its delivery to the payee. And in Houser v. Fayssoux, N. C., 83 S. E. Rep. 692, decided in 1914, it was decided that persons, who indorsed a note prior so its delivery to the payee, were entitled to notice of dishonor, notwithstanding the fact that they were directors of the corporation by which the note was made.

THE DECISIONS AND STATUTES REFERRED TO IN THE INQUIRY.

Sections 29, 70, 118 and 191 of the Illinois Negotiable Instruments Law, referred to in the inquiry, are not applicable to the situation here presented, that is to say, they do not in any way excuse the presentment of a note and the giving of notice of dishonor as to one who indorsed the note before its delivery to the payee.

Section 29 provides that an accommodation party is liable to a holder for value, "notwithstanding the holder at the time of taking the instrument knew him only to be an accommodation party." If a person indorses for accommodation he is liable just as any other indorser is liable. And like other indorsers he is entitled to presentment

and notice of dishonor. Section 88 provides that "except as otherwise herein provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged."

Section 70 provides that, "presentment for payment is not necessary in order to charge the person primarily liable on the instrument," but it also provides that presentment "is necessary in order to charge drawer and indorsers." The decisions, under the statute, already referred to indicate clearly that the indorser before delivery is not primarily liable on the instrument, but is liable as an indorser and, therefore, secondarily liable.

Section 118 provides the manner in which an instrument may be discharged. But the question under consideration is not the discharged of an instrument; it is a question of the discharge of an indorser. And section 88 quoted above declares that an indorser is discharged by a failure to give notice of dishonor. There is no doubt that the instrument involved in this controversy has not been discharged. By no means does it follow, however, that the indorser has been discharged.

Section 191 provides. "The person 'primarily' liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are 'secondarily' liable." It has already been pointed out that, prior to the enactment of the Negotiable Instruments Law, an indorser before delivery was regarded as primarily liable in some states but that the rule has been changed by the provisions of the statute and that such an indorser is deemed secondarily liable in those states which have adopted the act, under sections 63 and 64, to which reference already has been made.

Taking up the decisions, referred to in the inquiry, it will be found that they do not apply to the situation in hand.

Night and Day Bank v. Rosenbaum, Mo., 177 S. W. Rep. 693; decided in 1914 under the provisions of the Negotiable Instruments Law.

This action was brought against the accommodation indorser of a note, which contained an express waiver of demand, protest and notice. The note was not entirely paid at maturity and the maker subsequently gave the holder a renewal note for the balance due. The holder, however, retained the original note. The case stands for the proposition that the indorser was not discharged of liability on the original note by reason of the giving of the renewal note. Because of the waiver, written into the note, the question of the indorser's discharge on the ground that as notice of dishonor had been given to him was not presented for the consideration of the court.

It is to be remarked that, in the course of the opinion, the courts makes the following observation: "It is well settled that an accommodation indorser is *primarily* liable on the instrument * * as will ap-

pear by reference to the following authorities in point: Union Trust Co. v. McGinty, 212 Mass. 205, 98 N. E. Rep. 679; Wolstenholme v. Smith, 34 Utah 300, 97 Pac. Rep. 329." But each of the decisions referred to by the court deals with an accommodation maker and not with an indorser. If, by this statement, the court intended to convey the impression that one, who indorses a note before its delivery to the payee, is primarily liable so as not to be entitled to notice of dishonor, the court was clearly in error, as is indicated by the numerous authorities, construing the Negotiable Instruments Law, already cited, holding that such an indorser is entitled to notice.

Rouse v. Wooten, N. C., 63 S. E. Rep. 530, decided in 1906 under the provisions of the Negotiable Instruments Law.

This case holds that a surety is not entitled to notice of dishonor. It does not appear on what part of the instrument, nor in what form, the defendant signed. The court merely states that he was a surety and not an indorser. The decision does not, therefore, apply to the present situation; the inquiry at hand is directed toward finding out whether the party in question was a surety or an indorser and the authorities referred to indicate beyond question that he was an indorser and liable only as such.

Vanderford v. Farmers' & Mechanics Bank, Md. 66 Atl. Rep. 47, decided in 1907 under the Negotiable Instruments Law.

In this case the defendant signed a note on its face, apparently as a co-maker. The note was payable two months after date and the defendant claimed that he had signed, not as co-maker but as surety merely, and that he was discharged by an extension of time, granted by the holder to the principal maker, without the defendant's consent. It was held that he could not establish that he was liable only as a surety, except by showing that such was the understanding of all the parties to the instrument.

Mersick v. Alderman, Conn., 60 Atl. Rep. 109.

The holding in this case is that the accommodation maker of a note cannot set up the defense of want of consideration against one who acquired the instrument in good faith, in the ordinary course of business, and for value, though after maturity.

Richards v. Market Exchange Bank Co., Ohio, 90 N. E. Rep. 1000, decided in 1910 under the Negotiable Instruments Law.

This case holds that one, who indorses a note for accommodation in these words, "For value received I hereby guarantee the payment of the within note and hereby waive presentment, demand, protest and notice of protest," is liable as a guarantor and is released by an extension of time granted to the principal debtor without the guarantor's consent,

Union Trust Company v. McGinty, Mass. 98 N. E. Rep. 679, decided in 1902 under the Negotiable Instruments Law.

This case holds that one who signs a note as accommodation maker,

that fact being known to the holder, is not discharged from liability by an extension of time granted to the payee, the accommodated party, without the accommodation maker's consent.

First State Bank v. Williams, Ky., 175 S. W. Rep. 10, decided in 1915 under the Negotiable Instruments Law.

The holding in this case is to the effect that an accommodation maker is not entitled to notice of dishonor and is not discharged by an extension of time, granted to the principal maker without the accommodation maker's consent.

Fritts v. Kirchedorfer, Ky., 124 S. W. Rep. 882, decided in 1910 under the Negotiable Instruments Law.

This case holds that a surety is not entitled to demand and notice of dishonor. The opinion recites that the defendant was a surety but does not give the grounds on which that conclusion was reached.

Wilbour v. Hawkins, R. I., 94 Atl. Rep. 856. Decided in 1915 under the Negotiable Instruments Law.

In this case it was held that a woman, who signed her husband's note as accommodation maker is liable to a holder for value, although he knew of the circumstances under which the note was signed.

White v. Savage, Oregon, 87 Pac. Rep. 1040. Decided in 1906 under the Negotiable Instruments Law.

This case decides that a holder for value may enforce a note against an accommodation maker, without proceeding against the principal maker, even though the holder had notice, at the time he acquired the note, that the party sought to be charged signed for accommodation.

RIGHT OF HOLDER IN DUE COURSE TO RECOVER ON CHECK.

Editor Banking Law Journal. ——, NORTH CAROLINA, Sept. 30, 1915.

DEAR SIR:—Will you please be so kind as to answer the following question through your column:

A remits his check to B. B not receiving it promptly is paid the money on demand by A; A stopping payment on check. A few days later B receives the check and gets the bank to cash it and same goes to protest. The bank demands its money from A, as B is worthless and A declines to pay. Cannot the bank being an innocent holder for value make A pay? Yours respectfully, CASHIER.

Answer:—In our opinion the bank which cashed the check is entitled to recover from A., the drawer of the check, provided that the bank is a holder in due course. To be a holder in due course it must appear that the bank gave value for the check, that it received the check before it was overdue and that it received the check in good faith, without notice of any informity in the instrument, or defect in the title of the person negotiating it. It appears from the inquiry that the bank paid full value for the check. The time within which a check becomes overdue, so that the party who receives it after such time, is not a holder in due course, depends upon the circumstances. In this case the check was delivered by mail and it seems quite clear that the check was

received by the bank within proper time. Of course, if the bank had notice of any facts, which should put it upon inquiry as to the payee's right to negotiate the check, it would not be a holder in due course and would not be entitled to recover.

HOLDER OF NOTE MAY PROCEED AGAINST INDORSER WITHOUT FIRST RESORTING TO COLLATERAL IN HIS HANDS.

Editor Banking Law Journal. NEW JERSEY Sept. 17, 1915.

DEAR SIR:—Please enlighten us with reference to a bank's rights under the following circumstances:

John Doe discounts his note for $1,000 which has been regularly endorsed by Richard Roe. After several renewals of the obligation with same endorser, at which times, partial payments were made, the bank procures from John Doe, as additional security for the loan, his mortgage on certain real estate. The note is protested, and the bank makes formal demand upon Richard Roe, endorser for payment of the note. Richard Roe defends on the ground that the bank must first exhaust the collateral before a claim can be made against him.

Please advise us whether or not the defendant's contention is correct.

Yours very truly, CASHIER.

Answer:—There is no rule of law which requires the holder of a secured promissory note to attempt to collect on the collateral in his hands, or to apply it to the note, before bringing his action against the indorser. The statutes and decisions are to the effect that the holder may ignore the collateral which he holds and, upon the dishonor of the instrument, proceed directly against the indorser

The Negotiable Instruments Law, Section 144 of the New York Act, provides that, "subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder." The holder, of course, must make a proper presentment for payment and give due notice of dishonor to the indorser. That is what is meant by the words "subject to the provisions of this act," in the section of the statute above quoted.

In the case of First National Bank v. Wood, 71 N. Y. 405, it appeared that the defendant was the accommodation indorser on certain notes, made by one Devenport, who kept an account with the plaintiff bank, which were secured by mortgage on real estate. The law as to the right of the plaintiff is set forth in the following statement, taken from the opinion: "The defendants claims that the mortgage was the primary security for the indebtedness, and the notes were mere collateral promises to pay the same debt or liability secured by an lien on the real estate, and no action can be maintained on the notes, but the remedy must be confined to the mortgage as the higher security. The authorities relied on to sustain this position do not uphold the doctrine contended for in cases where commercial paper is discounted and collaterals taken to secure the same. The character of such paper is well understood, and it would be overthrowing long-established rules seri-

ously affecting the rights and liabilities of parties, to hold that resort must be first had to a mortgage or other instrument taken as a collateral to secure the same. In such cases the money is not loaned on the mortgage, but it is given merely to make the notes discounted more safe and secure and, according to the intention of the parties is not to be considered as the principal debt. Much embarrassment and perplexing complications would arise, if holders of such instruments, who had discounted paper on the faith of such security should be compelled to resort to the same primarily for the collection of their demands. It would in fact throw the burden of a litigation upon the party who was intended to be relieved from the same, and tend to thwart the purpose in view. We have been referred to no authority, which upholds and sustains any such principle. While an accommodation indorser may be regarded as a surety in some cases, and under certain circumstances, and has all the rights applicable to that relationship, yet as between him and a bona fide holder, where his liability has become fixed, he becomes the principal debtor, and if he desires the benefit of any security, he must pay up the debt, fulfill the contract and enforce the right of subrogation to the holder as to the securities held by him."

In Third National Bank of Malone v. Shields, it was decided that the holder of a note, secured by a chattel mortgage, may, without first exhausting his remedy under the mortgage, sue the indorsers upon the note. The court further declared the law to be that, if the indorsers desire the benefit of the mortgage, they must first pay the note, whereupon they would become subrogated to the rights of the holder as to the mortgage.

The holder, however, must not surrender possession of the collateral which he may hold. In the case of Price County Bank v. McKenzie, 91 Wis. 658. it was decided that the accommodation indorser of a note for the payment of which the payee holds security, is discharged by the application to other purposes, without his knowledge, of the proceeds of the security. In the opinion it was said: "It is settled law that where a creditor has the means of satisfaction in his hands, or within his control, as security, and does not use it for that purpose, but relinquishes it to his debtor, or misapplies it to the payment of unsecured claims against his debtor, a surety for his debt will be discharged."

Another case, which deals with the duties and obligations of the holder of a secured note, is Ocean Nat. Bank v. Fant, 50 N. Y. 474. In this case the defendant was sued as the indorser of a note, containing a statement that the maker had deposited with the payee certain collateral, which the payee could sell without notice in case of non-payment. The collateral came to the hands of the plaintiff bank when it became holder of the note. When the plaintiff demanded payment of the maker he stated that he was willing to pay upon receipt of his collateral security, but the notary making the presentment did not have the security with him. It was held that such a demand was insufficient to charge the indorser. To constitute a valid demand the collateral should have been produced or ready to be surrendered upon payment.

THE ANGLO-FRENCH LOAN.

THE GREATEST TRANSACTION IN THE HISTORY OF AMERICAN FINANCE SUCCESSFULLY CONSUMMATED.

The final formalities of the one half billion dollar loan to the English and French Goverments, upon which the eyes of the financial world have been centered for the past few weeks, were attended to at the offices of J. P. Morgan & Company, on the fifteenth of October. The planning and execution of this stupendous deal in dollars may well be said to mark an epoch in the financial progress of the United States. It was a severe test of the material resources of the country and the mental and executive ability of its bankers, which both the country and the bankers met and passed with apparent ease.

Prior to the final execution of the agreement both of the borrowing nations, Great Britain and France, took official action towards its authorization. On behalf of Great Britain the agreement was signed by the English members of the Anglo-French Commission, Baron Reading, Lord Chief Justice of England, Sir Edward Babington Smith, President of the National Bank of Turkey, Sir Edward H. Holden, Chairman of the London City & Midland Bank, Ltd., and Basil P. Blackett, C. B. Expert of the British Treasury. M. Octave Homberg, of the French Foreign Office and M. Ernest Mallett, Regent of the Bank of France, signed as representatives of the French Government. Under these signatures Mr. J. P. Morgan signed the name of his firm as the "agent of managers."

Upon the signing of the first agreement Baron Reading addressed those assembled, touching upon the gratification felt by himself and his colleagues for the successful termination of their mission in the United States, as follows:

"I desire to express our sincere gratitude. This is not an occasion on which I desire to make a speech. However, I do feel on behalf of the English Government that it is incumbent on us to say that we are very much indebted to all who have aided.

"May I add that, after we have given a close study to conditions here, after making ourselves acquainted with the difficulties of a transaction in this country, where people are unacquainted with external loans, we sought advice and it was given to us honestly and conscientiously, and not only in the best interests of our own country, but, we believe, in the best interests of the United States."

That the loan is nation wide and not local in its nature is shown by the fact that the underwriters number 289. While the big cities, New York, Boston, Chicago, Philadelphia, etc., contributed a large number of the underwriters, the names on the list represent 27 of the states and the District of Columbia, and come from 69 different cities, located throughout the country from San Francisco to Portland, Maine.

The loan agreement is a document of some 6,000 words and comprises fifteen articles. Article five confers upon J. P. Morgan & Company full authority as to the arrangement of details in the following terms:

"Either before or after final distribution under this agreement, the managers in behalf of the syndicate may make any and all arrangements and may perform any and all acts, even not herein provided for, that in the exercise of their unrestricted discretion, they shall deem to be expedient in order to consumate the purposes of this agreement, or to promote or protect the interests of the syndicate."

The bonds are offered to the public at 98 and interest, at which price the investment will yield nearly 5½%. Coupon bonds are obtainable in $100, $500 and $1,000 denominations, which may be registered as to principal. Fully registered bonds are issued in $1,000, $10,000 and $50,000 denominations and authorized multiples. Payment may be made in full on October 29, or, at the option of the purchaser, one half of the purchase price may be paid on that day and the balance on December 8.

The bonds are dated October 15, 1915, and mature on October 15, 1920. The two classes of bonds, coupon and registered, are interchangeable. Both interest and prin-

cipal is payable in New York City in gold coin of the United States, without deduction for any present or future British or French taxes.

In the opinion of bankers the attractiveness of the investment is enhanced by the fact that the bonds may, at the option of the holder, on any date not later than April 15, 1920, or (provided that notice be given not later than April 15, 1920,) at maturity, be exchanged, par for par, for 15 25-Year Joint and Several 4½ per cent. bonds of the Governments of the United Kingdom of Great Britain and Ireland and the French Republic. The 4½ per cent. bonds are payable as to both principal and interest in New York City in gold coin of the United States, and, similar to the present issue, are free from deduction for taxes. They will mature on October 15, 1940, but will be redeemable at par and accrued interest, in whole or in part, on any interest date not earlier than October 15, 1930, upon three month's notice.

With reference to the borrowing power of the participation receipts, J. P. Morgan & Co. has issued the following statement:

"It is understood that an impression is current that it is impossible to borrow on participation receipts in the Anglo-French Loan. This is absolutely erroneous. The receipts are not transferable without the consent of the syndicate managers, but upon request, J. P. Morgan will give a letter to any bank, recognizing an assignment for the purposes of a loan."

So much has been written editorially in the press upon the international aspect of the loan that it is hardly necessary to emphasize the fact that it is not a "pro Ally loan," nor a war loan in any sense. Mr. J. P. Morgan, in addressing a meeting of of representatives of investment and banking houses, on October 7th, called for the purpose of acquainting them with the technical features of the proposed credit, observed that in making the loan, we "are merely giving our customers time—the best customers America ever had."

After pointing out reasons why the offered bonds should be regarded as a sound investment, Mr. Morgan said:

"Before many months the investing public is going to wake up to the attractiveness of this offering. One of the best features about this bond has not received much attention. That is, the conversion privilege, permitting them to be converted into 4½% bonds. In five years this war will be over—well over, please God. And I want to say that nobody is going to extinguish any great nation by this war. However, it ends, the borrowers' credit will be good! And if interest rates for Government loans are back to 3½ % when these notes mature, it is not unlikely that the two countries will be willing to pay a handsome premium to retire them.

"Is the country ready for a foreign loan? I answer, 'Yes.' We have a large amount of cash in the banks, business is picking up, and there are everywhere signs of greater activity. People should now be ready to add to the variety of their investments bymixing some foreign Government bonds with their corporation and municipal issues."

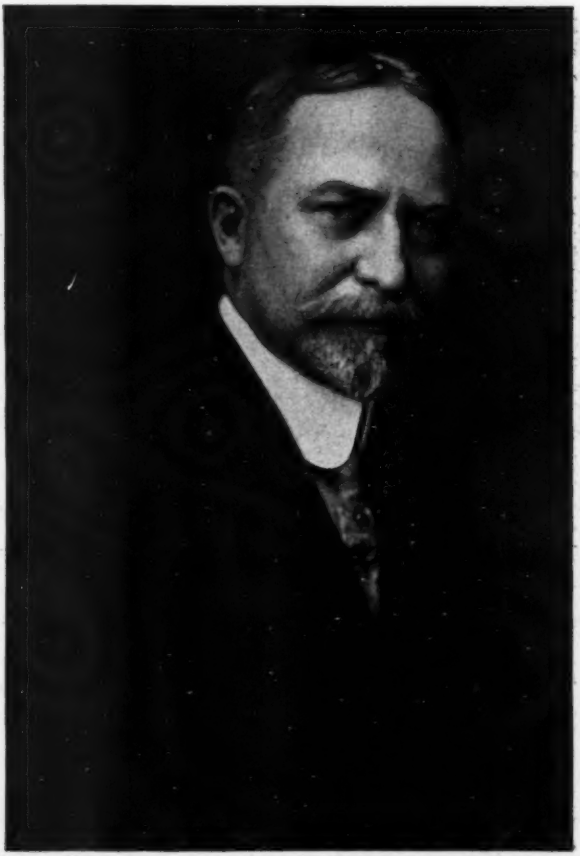
BOOK NOTICE.

ELEMENTARY BANKING.

Elementary Banking is the title of a book by O. Howard Wolfe, associated with the American Institute of Banking, recently published by the American Institute of Banking, 5 Nassau street, New York City. It is not a large volume but an extremely interesting one to any one not thoroughly versed in the details of the banking business. It is intended for beginners, those who are starting out with the intention of making banking their vocation in life. And it serves its purpose admirably. In clear and simple terms it explains the various functions of a bank, the different departments in a bank, the relations of these departments to each other, the bookkeeping system of the bank and the duties of the different officers. A portion of the book is devoted to savngs banks, trust companies and clearing houses, showing what each is created for and how they differ one from the other. Any young man starting out on a banking career, who reads this book, will have a foundation which will enable him more readily to comprehend the mysteries of banking as he is initiated into them day by day. The price of the volume is $1.

JAMES S. ALEXANDER.

The usual time honored custom of bestowing the honor of Chairman of the New York Clearing House Association upon bankers who have rendered effective service to the Association, was followed at the last annual meeting by the Election of James S. Alexander, President of the National Bank of Commerce, as Chairman for the ensuing term.



JAMES S. ALEXANDER,
President National Bank of Commerce.
Chairman New York Clearing House Association.

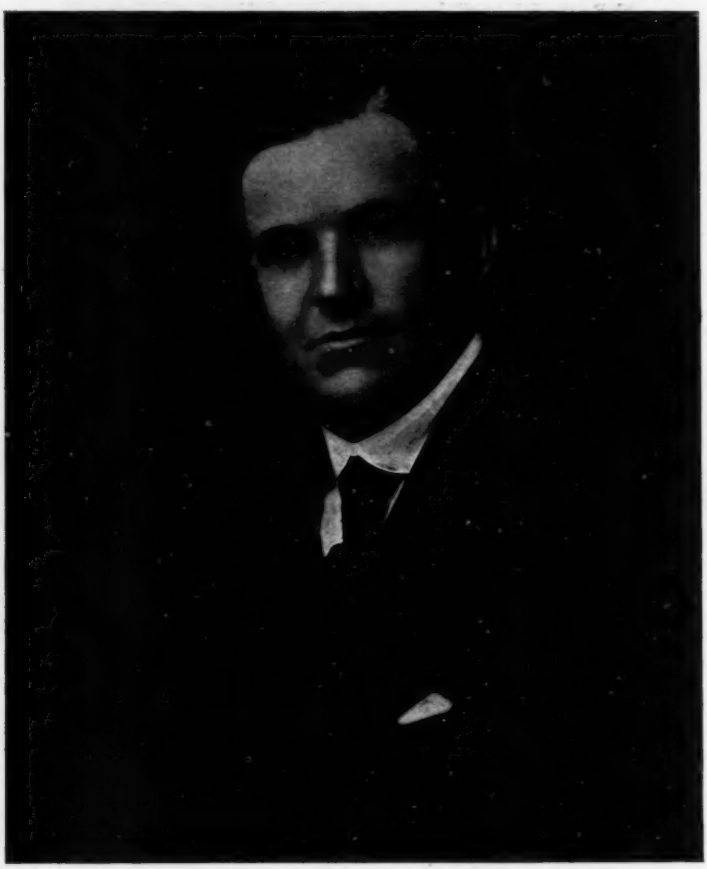
Mr. Alexander was Chairman of two important committees last fall and his election as Chairman of the Association was a recognition of his services upon those committees.

His record as a successful executive officer in an institution like the National Bank of Commerce, reflects his ability as a banker. Further evidence of his business judgment is reflected in his selecting associates on his official staff.

The latest addition to the staff is that of Mr. J. Howard Ardrey, of Dallas, Texas,

who, Mr. Alexander announces as having been elected Vice-President, at a recent meeting of the Board of Directors.

Mr. Ardrey was born in Dallas, Texas, 40 years ago. After graduating from the University of Texas, he spent the next few years as a merchant and grain buyer. At the age of 25 he entered upon the profession of banking, with which he has since been uninterruptedly identified. In course of time he was elected Cashier of the City National Bank of Dallas, which is one of the strongest financial institutions of the Southwest, and later he became Vice President of that institution.



J. HOWARD ARDREY,
Vice-President National Bank of Commerce.

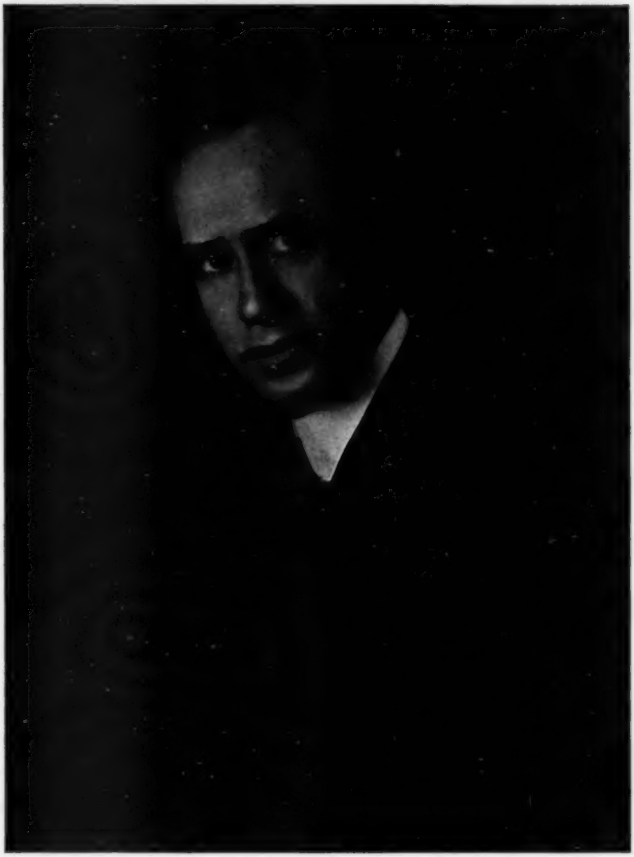
Upon the organization of the Federal Reserve System, Mr. Ardrey was elected a member of the Federal Advisory Council, representing the Eleventh or Dallas district. He is widely and favorably known to the business men and bankers of Texas; has traveled extensively in the interests of the Dallas Chamber of Commerce; is a forceful speaker, and has written numerous articles on banking, commerce and economics.

Simutlaneous with the election of Mr. Ardrey, as Vice President, came the annouce-

ment of the promotion of three young men on the official staff, all of whom have been advanced for efficient service.

Mr. Stevenson E. Ward was advanced from Cashier to Vice President; Mr. Faris R. Russell, from Assistant Cashier to Cashier and Mr. Archibald F. Maxwell was made Assistant Cashier.

Mr. Ward has been Cashier since 1912, he is a native of Mansfield, Ohio, but received his education in the University of Michigan, at Ann Arbor. Upon leaving college he became actively engaged in business in Mansfield. He entered the Bank of



STEVENSON E. WARD,
Vice-President National Bank of Commerce.

Mansfield when a young man at the bottom of the ladder and passed successfully through the various grades of that institution to that of cashier. In 1912, he was tendered the Assistant Cashiership of the National Bank of Commerce, and in October of that year was made cashier.

Another deserving promotion is that of Mr. Faris R. Russell, who was elected

Cashier to succeed Mr. Ward. Mr. Russell was born in Franklin, Tenn. in 1883, and is thus one of the youngest bank officials in New York.

He is the son of a prominent clergyman of the South, and spent the most of his boyhood days in Northern Texas.

FARIS R. RUSSELL,
Cashier National Bank of Commerce.

In 1901 he came to New York and entered the Western National Bank as a messenger. When the Western was absorbed by the Commerce in 1903, Mr. Russell was retained by the Commerce and within four years he was advanced to Assistant Cashier, and in another eight years to Cashier.

Mr. Russell's rapid rise is due to his keen perception powers, which attracted the attention of the management and his reward is well merited.

THE CHATHAM & PHENIX NATIONAL BANK OF THE CITY OF NEW YORK.

On September 18th the Chatham & Phenix National Bank announced that the merger of the Century Bank of New York with the Chatham & Phenix was consumated, and that a new step in the history of the National Banking System had been recorded through the acquisition of twelve branches, that have been operated by the Century, all of which will be owned and operated by the Chatham & Phenix.

These branches are situated in different parts of the City of New York, and their operation by the Chatham & Phenix will be the first National Bank to own and operate branches.

Under the old National System it was believed that a national bank could not operate branches, but if a State bank having branches was converted into a national bank the law permitted the continuance of the branches.

Louis G. Kaufman, president of the Chatham & Phenix, resurrected this section of the old act covering this point and applied it to the conversion of the Century Bank, with its branches, into the Century National, which was subsequently consolidated with the Chatham & Phenix, all of which was approved by Comptroller of the Currency Williams.

The enlarged bank now has capital and surplus of $5,000,000 and total resources of over $60,000,000.

Mr. C. S. Mitchell and George V. Kennedy, who were formerly vice-presidents of the Century have been retained as vice-presidents of the Chatham & Phenix. Other than this there has been no change in the official staff of the Chatham & Phenix. Several of the directors of the Century have been added to the directorate of the Chatham & Phenix.

The present official staff is as follows: Louis G. Kaufman, president; Frank J. Heaney, vice-president; Richard H. Higgins, vice-president; William H. Strawn, vice-president; Bert L. Haskins, vice-president; Frank V. Baldwin, vice-president; Norborne P. Gatling, vice-president; George V. Kennedy, vice-president; C. Stanley Mitchell, vice-president; Henry L. Cadmus, assistant cashier; Walter B. Boice, assistant cashier; Henry C. Hooley, assistant cashier; Vinton M. Norris, assistant cashier; Joseph Brown, assistant cashier; and George M. Hard, chairman.

President Kaufman has announced that the Chatham & Phenix will continue as a strictly commercial Bank.

THE FINANCIERS REPORT OF A. B. A. CONVENTION.

As has been its custom for a number of years the Financier of New York published a verbatim report of the proceedings of the A. B. A. Convention at Seattle.

The volume this year is handsomely printed in two colors, and illustrated with portraits of prominent bankers from all parts of the country.

The many patrons of the Financier who were unable to attend the convention appreciate being able to read the account of it in such a short time after the convention was held.

CO-OPERATIVE BANK ADVERTISING.

ADDRESS BY E. B. WILSON, OF THE BANKERS' TRUST COMPANY OF NEW YORK, BEFORE THE PITTSBURGH BANKERS' AD ASSOCIATION.

In a talk, recently delivered by Mr. E. B. Wilson, of the Bankers' Trust Company of New York, at a meeting of the Pittsburgh Bankers' Ad Association, Mr. Wilson outlined a co-operative advertising campaign, which might be used by the bankers in any community for the purpose of increasing their deposits, with good results.

Mr. Wilson pointed out that, notwithstanding the fact that it is customary for banks to compete for business, the interests of the bankers in any particular community are common. They all wish to increase their business and to create a greater confidence on the part of the public in their banking houses. The campaign, suggested by Mr. Wilson, is directed toward the creation of new business, by bringing in new depositors. New depositors can be brought in by educating the industrial workers of the community, by pointing out to them the advantages and necessity of conserving their private capital, by inculcating in them principles of thrift and by making them acquainted with the fact that the banks are as ready to accept their deposits, no matter how small, as they are to receive the account of a great and prosperous corporation. There are far too many people in every community, who fail to realize that it is possible for them to get into close human touch with a bank and to partake of the benefits of the service which it has to offer. A bank inspires them with a feeling of awe. It is an inhuman, soulless thing, with which they have nothing in common. They do not realize that the bank is not only willing, but anxious, to extend to them the benefits of its service. This applies particularly to the younger members of the community. These can be reached by proper and efficient advertising, and one of the results will be to "increase the stream of small contributions of capital into channels of legitimate business and diminish the stream which flows into the illegitimate channels, where the money is finally lost in the 'slough of despond.'"

The plan suggested by Mr. Wilson calls for intelligent co operation among the banks and the various banking associations in the appointment of a central committee, a sort of board of strategy, which, under expert direction, will work out the details of the campaign in advance of its inauguration. After the plan of action, which should involve a prolonged and persistent campaign, has been decided upon, it must be carried out in all its details with that feeling of enthusiasm and confidence which insures success. The way should be blasted by local newspaper advertising and this should be followed with booklets and pamphlets, which tell in a simple, interesting and forceful way "the story of what the banks have done and can do for the business of the community, as well as for the individual."

A. BARTON HEPBURN'S

HISTORY OF CURRENCY IN THE UNITED STATES.

A History of Currency in the United States, with a brief description of the currency systems of all commercial nations, by A. Barton Hepburn, LL.D., Chairman of the Board of Directors of the Chase National Bank of New York, has just been published by The Macmillan Company, New York City. In his book Mr. Hepburn presents all the essential facts relative to currency, coinage and banking, from the wampumpeage currency of the colonies to the Federal Reserve notes, from the adoption of the Federal Constitution down to the present time, and it presents them in a manner which makes the reading of financial History a pleasure.

A book of this character could hardly have been brought out at a more opportune time than the present, just as we are passing a crisis in the political and financial history of the world. Mr. Hepburn's career as a banker is well known; it needs no comment. The writing of his history of Currency is an achievement and public service which entitles him to the commendation and gratitude of bankers, students of finance and every one who, in the least way, is interested in the political and commercial progress of his country. It is to be doubted if any financial history has ever been brought out which covers its subject so thoroughly and presents its facts in a style so entertaining. The volume contains 552 pages and the price is $2.50 per copy.

BANK MEN FOR EDUCATION.

COLUMBIA UNIVERSITY TO COOPERATE WITH AMERICAN INSTITUTE OF BANKING.

The 2,500 bank men in New York City, members of New York Chapter of the American Institute of Banking, the educational section of the American Bankers Association, will this year have an opportunity to continue their study of banking, banking law, economics and kindred subjects under the expert direction of the Department of Extension Teaching of Columbia University. In its annual year book for 1915-1916, just out, the Chapter announces that an agreement has been made with Columbia University whereby the University will have entire supervision of the instructors and the educational work of the Chapter, and it is believed that this arrangement will tend to establish a more highly specialized banking course than has ever before been attempted in any of our educational institutions.

The courses which have been arranged for the coming season, together with the instructors in each, are as follows:

STANDARD LAW COURSE: Prof. John W. Edgerton of Yale University; Prof. Charles W. Gerstenberg of New York University; Milton W. Harrison, Secretary, Savings Bank Section of the American Bankers Association.

STANDARD BANKING COURSE: Prof. Chas. A. Green of the Brooklyn Polytechnic Institute; Orrin R. Judd, Ass't Trust Officer, Columbia Trust Company; A. F. Maxwell, Credit Manager, National Bank of Commerce; Franklin Escher, Investment Statistician and Lecturer at New York University.

PRELIMINARY COURSE: Dr. F. M. Whitehall of Stuyvesant High School; Prof. Chas. A. Green of the Brooklyn Polytechnic Institute; Orrin R. Judd, Ass't Trust Officer, Columbia Trust Company.

BANK ADVERTISING: Fred W. Ellsworth, Publicity Manager, Guaranty Trust Company of New York.

SPANISH: Prof. Maxime Iturralde.

PUBLIC SPEAKING: Dale Carnagey.

FOREIGN EXCHANGE: Franklin Escher, Investment Statistician and Lecturer at New York University.

Commencement exercises were held in Masonic Hall, Sixth Avenue and Twenty-fourth Street, on Tuesday evening, September 28th, at which time the Institute certificate will be presented to those men who have successfully passed the examinations in the Standard Courses.

Addresses were delivered by Hon. Frank Moss, former Assistant District Attorney, James C. Egbert, Ph. D., Director of Extension Teaching at Columbia University, and George E. Allen, Educational Director of the American Institute of Banking.

TWENTY-FIFTH ANNIVERSARY OF THE MISSISSIPPI VALLEY TRUST CO. OF ST. LOUIS.

On October 3, the Mississippi Valley Trust Company of St. Louis passed its twenty-fifth mile post of successful business.

In commemorating this quarter of a century anniversary, the October issue of the bi-monthly publication, "Service" published by the company, was devoted to an interesting sketch of the company's career, illustrated with half-tone views of old and new St. Louis, and with the portraits of the officers and directors, and a brief biographical sketch of each, all of which shows the character of the many substantial bankers and business men connected with the Mississippi Valley Trust Co.

The working of the various departments are explained and illustrated as well, in this beautiful number, and its typographical appearance, as does its literary style, reflects much credit upon its compiler, Mr. G. Prather Knapp, the progressive publicity manager of the company.

SYNOPSIS OF ADDRESS OF JOHN SKELTON WILLIAMS, COMPTROLLER OF THE CURRENCY,

AT THE ANNUAL CONVENTION OF THE KENTUCY BANKERS ASSOCIATION, FRANKFORT, KY., OCTOBER 6, 1915.

On October 6, John Skelton Williams, Comptroller of the Currency, in his address before the Annual Convention of the Kentucky Bankers' Association, gave special attention to criticisms of his office and of the Administration of the Treasury Department made by Senator Weeks of Massachusetts before a recent gathering of Michigan bankers. Senator Weeks had complained strongly against the action of the Comptroller and the Treasury Department in attempting to regulate the rates of interest to be charged by bankers, and said that the rate was a matter for each banker to determine for himself. Mr. Williams took this remark as a text and declared it to be evidence of the Senator's ignorance, heartless disregard for the welfare of debtors or absolute lack of understanding of the needs of the country and of care for the future. He challenged Senator Weeks to suggest an inquiry into the conduct of the Comptroller's office in the matter of the regulation of interest rates of which we had complained, and to come before the country in advocacy of unrestrained interest rates and have all the facts and official records spread before the people.

In speaking of the gold supply in the United States, Mr. Williams said "the estimated gold supply of the United States in gold coin and bullion is more than two billion dollars, of which our state and national banks hold one billion and the Federal Reserve banks and the Treasury 640 millions, leaving more than four hundred millions in the pockets of the people. At no time in recorded history have the banks of any country held such resources as the banks of this country hold today".

He stated that the deposits of all the banks in the United States, including Trust Companies, had, in the past fifteen years, increased at the average rate of about a billion dollars a year.

The income of the people of the United States over the expenses of living and available for development and investment, he said, amounts to 5,000 millions of dollars per annum. The total annual income of the people of this country from productive occupations he placed at 30,000 millions per annum.

He said the total wealth of the United States is now estimated at 210 billions as compared with 76 billions as the total wealth of Germany in 1911; 55 billions the total wealth of France in 1908; and 108 billions the wealth of the whole British Empire, including the United Kingdom, Canada, Australia, India and South Africa, by the latest available computation, that of 1903.

ALEXANDER D. CAMBELL.

Alexander D. Cambell, who for fifteen years has been an assistant cashier of the Hanover National Bank, died at his residence, 131 Riverside Drive, New York, October 12, after an extended illness. Mr. Cambell's connection with the Hanover National Bank covers a period of thirty-four years, he having entered the bank as a clerk in 1881. In 1900 he was made assistant cashier in reward for diligent and faithful service in the various departments of the bank. His loss will be mourned by his associates in the bank, all of whom have many words of praise for him.

For a number of years Mr. Cambell was a familiar figure at bankers conventions, particularly the American Bankers Association meetings, where he made hosts of friends for the Hanover National Bank as well as for himself.

He was a member of the Larchmont and Columbia Yacht Clubs.

He leaves a wife and one daughter, Miss Abigail Alison Cambell.

Mr. Cambell's genial disposition made him many friends, all of whom will regret to learn of his death.

NEW FOREIGN EXCHANGE EXPERT IN THE GUARANTY TRUST COMPANY OF NEW YORK.

The Guaranty Trust Company of New York has appointed George Weston as an additional assistant to Vice President Max May in the management of their foreign business. Mr. Weston will have charge of the general organization of that branch of the company's activities, and will be known as Manager of the Foreign Department.

Mr. Weston comes from the American Express Company, where for a number of years he has had supervision of their financial business in the Eastern Department, covering the Eastern States and the Dominion of Canada. He was identified almost from its inception with the organization and development of the foreign exchange business of the American Express Company, and thus has had wide experience in international exchange operations.

Mr. Weston is a native of Ohio and received his early education in that state. This was later supplemented by special courses at Pratt Institute. He entered the service of the American Express Company in 1892 as junior clerk, and successively filled practically all positions in the Financial and Foreign Exchange Department of the company. In 1910 he was chosen to organize and develop that branch of the company's business in the newly created Pacific Division, with headquarters at Portland, Ore., and in 1912 returned to New York to assume charge of the company's financial business in Europe. Mr. Weston has travelled extensively and has an unusually wide acquaintance among the bankers of the United States.

RESERVE AGENTS APPROVED IN AUGUST.

The following banks were approved as Reserve Agents in September:

Hanover National Bank, New York, for Nat. Bank of Arkansas, Pine Bluff, Ark.; First Nat. Bank, St. Maries, Ida.; Staunton Nat. Bank, Staunton, Ill.; First Nat. Bank, Murray, Ky.; Elverson Nat. Bank, Elverson, Pa.

Irving National Bank, New York, for First Nat. Bank, Glens Falls, N. Y.

Mechanics & Metals National Bank, New York, for First Nat. Bank, Centerville, So. Dak.; Atlas Exchange Nat. Bank, Chicago, Ill.; Dakota Nat. Bank, Yankton, So. Dak.; First Nat. Bank, Primghar, Ia.; Northwestern Nat. Bank, Sioux City, Ia.; American Nat. Bank, Spearfish, So. Dak.

Chase National Bank, New York, for First Nat. Bank, Carsonville, Mich.

Chatham & Phenix National Bank, New York, for New York State Nat. Bank, Albany, N. Y.

Continental & Commercial National Bank, Chicago, for First Nat. Bank, Carsonville, Mich.; First Nat. Bank, Bryant, So. Dak.; First Nat. Bank, Florence, So. Dak.; City Nat. Bank, Wichita Falls, Tex.; First Nat. Bank, Staunton, Ia.

First and Security National Bank, Minneapolis, for First Nat. Bank, Bryant, So. Dak.; First Nat. Bank, Florence, So. Dak.; First Nat. Bank, Bridger, Mont.; First Nat. Bank, Lake Preston, So. Dak.

National City Bank, Chicago, for Farmers & Merchants Nat. Bank, Comanche, Tex.

Third National Bank, St. Louis, for Staunton Nat. Bank, Staunton, Ill.

COMPARATIVE NEW YORK BANK STATEMENT.

The following table shows the Loans, Cash, Reserves and Deposits of the associated banks, reported to the New York Clearing House for the week ending October 9, 1915:

BANK.	*Loans, Discounts, Investments etc. Average.*	*Gold, Silver & Legal Tenders Average.*	*Reserves with Legal Depositories Average.*	*Legal Net Deposits Average.*		
Members of Federal Reserve Bank.						
Bank of N. Y. N. B. A...	$38,319,000	$4,873,000	$2,608,000	$37,527,000	....	....
Merchants' National.....	30,136,000	3,430,000	2,139,000	29,811,000	....	....
Mechanics & Metals Nat..	106,688,000	32,057,000	9,057,000	128,223,000	....	....
National City	306,262,000	87,957,000	30,343,000	357,226,000	....	....
Chemical National.....	31,683,000	10,251,000	2,748,000	33,251,000	....	....
A lantic National.....	10,424,000	1,403,000	1,072,000	10,814,000	....	....
Nat. Butchers & Drovers..	1,964,000	228,000	130,000	1,707,000	....	....
American Exchange Nat.	82,607,000	9,702,000	6,967,000	84,760,000	....	....
Nat. Bank of Commerce..	213,554,000	26,161,000	15,958,000	211,022,000	....	....
Chatham & Phenix Nat...	49,025,000	5,106,000	3,639,000	51,747,000	....	....
Hanover National.....	102,063,000	30,547,000	9,104,000	123,083,000	....	....
Citizen's Central National	26,761,000	2,798,000	2,113,000	25,139,000	....	....
Market & Fulton Nat. ...	9,028,000	2,381,000	932,000	9,481,000	....	....
Importers & Traders Nat.	32,775,000	4,682,000	2,256,000	30,540,000	....	....
National Park.....	134,098,000	16,230,000	9,900,000	136,391,000	....	....
East River National.....	2,256,000	309,000	180,000	2,063,000	....	....
Second National.....	16,026,000	1,671,000	979,000	13,062,000	....	....
First National	156,364,000	28,007,000	12,091,000	159,121,000	....	....
Irving National.....	56,128,000	15,934,000	4,832,000	68,799,000	....	....
N. Y. County National...	9,580,000	1,195,000	673,000	9,694,000	....	....
Chase National	152,617,000	46,734,000	15,696,000	200,240,000	....	....
Lincoln National	17,034,000	2,376,000	1,230,000	17,230,000	....	....
Garfield National	8,894,000	1,526,000	724,000	8,751,000	....	....
Fifth National	4,588,000	446,000	315,000	4,571,000	....	....
Seaboard National ..	34,740,000	7,563,000	3,342,000	41,928,000	....	....
Liberty National	48,524,000	4,852,000	4,438,000	53,529,000	....	....
Coal & Iron Nat'l Bank ..	7,918,000	1,334,000	664,000	8,340,000	....	....
Union Exchange Nat.. ..	9,972,000	1,008,000	742,000	9,399,000	....	....
Nassau Nat. Bank, Bklyn.	9,051,000	889,000	588,000	8,309,000	....	....
Broadway Trust Co.....	16,366,000	2,048,000	1,299,000	17,498,000	....	....
State Banks Not Members of Federal Reserve Bank.						
Bank of the Manhattan Co.	41,800,000	15,122,000	.....	51,000,000	....	....
Bank of America.....	34,739,000	7,813,000	.....	34,876,000	....	....
Greenwich.....	10,545,000	1,692,000	544,000	11,367,000	....	....
Pacific.....	5,138,000	1,002,000	.....	4,737,000	....	....
People's.....	2,430,000	318,000	169,000	2,752,000	....	....
Metropolitan Bank.....	12,358,000	3,211,000	.....	11,628,000	....	....
Corn Exchange	80,273,000	20,020,000	4,333,000	97,875,000	....	....
Bowery.....	3,291,000	401,000	176,000	2,937,000	....	....
German-American.....	4,948,000	1,134,000	200,000	5,203,000	....	....
Fifth Avenue.....	15,433,000	4,273,000	.....	17,096,000	....	....
German Exchange.....	3,815,000	590,000	216,000	3,597,000	....	....
Germania	5,947,000	920,000	241,000	5,957,000	....	....
Bank of the Metropolis...	13,376,000	2,253,000	.....	12,522,000	....	....
West Side Bank	4,521,000	573,000	337,000	4,351,000	.. .	....
N. Y. Produce Exchange.	12,244,000	3,301,000	.....	13,779,000	....	....
State Bank	19,456,000	2 26,000	1,295,000	21,572,000	....	....
.....	.....	.....	.....	.....	....	....
Totals.....	$1,995,759,000	$496,560,000	$154,270,000	$2,194,537,000		